No. 15580

United States
Court of Appeals
for the Ninth Circuit

E. S. McKENDRY, FLORENCE LOWE BARNES, also known as Pancho Barnes and WILLIAM EMMERT BARNES,

Appellants,

vs.

UNITED STATES OF AMERICA, Appellee.

Transcript of Record

In Two Volumes

VOLUME I.
(Pages 1 to 308, inclusive)

Appeal from the United States District Court for the Southern District of California, Northern Division

FILED
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PAUL P. O'BRIEN, CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

NAMES AND ADDRESSES OF ATTORNEYS

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* Page numbers appearing at bottom of page of original Transcript of Record.

In the United States District Court, Southern District of California, Northern Division

No. 1253 ND Civil

UNITED STATES OF AMERICA,

Plaintiff,

vs.

360 ACRES OF LAND IN THE COUNTY OF KERN, State of California; E. S. McKENDRY; FLORENCE LOWE BARNES, also known as FLORENCE LOWE BARNES McKENDRY; WILLIAM EMMERT BARNES; BENJAMIN C. HANNAM; KATHRYN MAY HANNAM; FLORENCE LOWE BARNES, doing business as PANCHO'S RANCHO ORO VERDE; DESERT AERO, INC.; LAYNE & BOWLER CORPORATION, a corporation; FARMERS AND MERCHANTS TRUST COMPANY OF LONG BEACH, a corporation; FARMERS AND MERCHANTS BANK OF LONG BEACH, a corporation; COUNTY OF KERN, a body politic and corporate; STATE OF CALIFORNIA, a corporation sovereign and UNKNOWN OWNERS, Defendants.

COMPLAINT IN CONDEMNATION

1. This is an action of a civil nature brought by the United States of America at the request of the Assistant Secretary of the Air Force of the United States, for the taking of property under the power of eminent domain and for the ascertainment and

award of just compensation to the owners and parties in interest.

2. The authority for the taking is the Act of Congress approved February 26, 1931 (46 Stat. 1421; 40 U.S.C., Sec. 258a), and acts supplementary thereto and amendatory thereof, and under the [2] further authority of the Act of Congress approved August 1, 1888 (25 Stat. 357; 40 U.S.C., Sec. 257); and the Act of Congress approved August 18, 1890 (26 Stat. 316), as amended by the Acts of Congress approved July 2, 1917 (40 Stat. 241) and April 11, 1918 (40 Stat. 518; 50 U.S.C., Sec. 171), which acts authorize the acquisition of land for military purposes; the Act of Congress approved August 12, 1935 (49 Stat. 610, 611; 10 U.S.C., 1343a, b, and c), which Act authorized the acquisition of land for Air Force Stations and Depots; the National Security Act of 1947 approved July 28, 1947 (61 Stat. 495); the Act of Congress approved June 17, 1950 (Public Law 564, 81st Congress); and the Act of Congress approved September 6, 1950 (Public Law 759, 81st Congress), which act appropriated funds for such purposes.

3. The public uses for which said lands are taken are as follows: The said lands are necessary adequately to provide for expanding needs and requirements for the Department of the Air Force and other military uses incident thereto.

4. The estate taken for said public uses is the fee simple title, subject, however, to existing ease-

ments for public roads and highways, public utilities, railroads and pipe lines.

5. The property so to be taken is situate in the County of Kern, State of California, and, for convenience, is segregated into separate tracts designated by separate tract numbers and is more particularly described as follows:

Tract L-2040: West Half (W½) of the Northwest Quarter (NW¼); Northeast Quarter (NE¼) of the Northwest Quarter (NW¼); West Half (W½) of the Southeast Quarter (SE¼) of the Northwest Quarter (NW¼) of Section 20, Township 9 North, Range 10 West, S.B.B. & M., according to the official plat of the survey of said land on file in the Bureau of Land Management. [3]

Tract L-2043: West Half (W½) of the Northeast Quarter (NE¼); East Half (E½) of the Southeast Quarter (SE¼) of the Northwest Quarter (NW¼) of Section 20, Township 9 North, Range 10 West, S.B.B. & M., according to the official plat of the survey of said land on file in the Bureau of Land Management.

Tract L-2071: Northwest Quarter (NW¼) of the Southwest Quarter (SW¼) of Section 20, Township 9 North, Range 10 West, S.B.B. & M., according to the official plat of the survey of said land on file in the Bureau of Land Management.

Tract L-2072: East Half (E½) of the Northeast Quarter (NE¼) of Section 20, Township 9 North, Range 10 West, S.B.B. & M., according to the offi-

cial plat of the survey of said land on file in the Bureau of Land Management.

6. The names of the apparent and presumptive owners of the said land are set out after each tract number as follows:

Tract L-2040: E. S. McKendry; Florence Lowe Barnes McKendry; Desert Aero, Inc. and Layne & Bowler Corporation.

Tract L-2043: William Emmert Barnes; Florence Lowe Barnes McKendry; Desert Aero, Inc. and Layne & Bowler Corporation.

Tract L-2071: Benjamin C. Hannam and Kathryn May Hannam; E. S. McKendry, also known as E. S. McKenndry, and Florence Lowe Barnes McKendry. [4]

Tract L-2072: E. S. McKendry; Florence Lowe Barnes McKendry; Desert Aero, Inc. and Layne & Bowler Corporation.

7. The State of California and the County of Kern may have or claim an interest in the property by reason of taxes and assessments due and exigible.

8. In addition to the persons named there are or may be others who have or may claim to have some interest in the property to be taken, whose names are unknown to plaintiff and such persons are made parties to this action under the designation "Unknown Owners".

Wherefore, plaintiff demands judgment that the

property be condemned and that just compensation for the taking be ascertained and awarded and for such other relief as may be lawful and proper.

Dated: February 27, 1953.

WALTER S. BINNS,
United States Attorney,
A. WEYMANN,
Special Attorney, Lands Division,
Department of Justice,
/s/ By A. WEYMANN,
Attorneys for Plaintiff.

Demand for Jury Trial

Trial by jury of the issues of just compensation is demanded by plaintiff.

Dated: February 27, 1953.

WALTER S. BINNS,
United States Attorney,
A. WEYMANN,
Special Attorney, Lands Division,
Department of Justice,
/s/ By A. WEYMANN,
Attorneys for Plaintiff. [5]

[Endorsed]: Filed February 27, 1953.

[Title of District Court and Cause No. 1253-ND.]

DECLARATION OF TAKING

To the Honorable the United States District Court:

I, the undersigned, Edwin V. Huggins, Assistant

Secretary of the Air Force of the United States of America, do hereby make the following declaration by direction of the Secretary of the Air Force:

1. (a) The lands hereinafter described are taken under and in accordance with the Act of Congress approved February 26, 1931 (46 Stat. 1421, 40 U.S.C. 258a) and acts supplementary thereto and amendatory thereof, and under the further authority of the Act of Congress approved August 1, 1888 (25 Stat. 357, 40 U.S.C. 257); the Act of Congress approved August 18, 1890 (26 Stat. 316) as amended by the Acts of Congress approved July 2, 1917 (40 Stat. 241) and April 11, 1918 (40 Stat. 518, 50 U.S.C. 171), which acts authorize the acquisition of land for military purposes; the Act of Congress approved August 12, 1935 (49 Stat. 610, 611; 10 U.S.C. 1343a, b and c), which [6] Act authorized the acquisition of land for Air Force Stations and Depots; the National Security Act of 1947 approved July 26, 1947 (61 Stat. 495); the Act of Congress approved June 17, 1950 (Public Law 564, 81st Congress), which act authorizes acquisition of the land, and the Act of Congress approved September 6, 1950 (Public Law 759, 81st Congress), which act appropriated funds for such purposes.

(b) The public uses for which said lands are taken are as follows: The said lands are necessary adequately to provide for expanding needs and requirements for the Department of the Air Force and other military uses incident thereto. The lands have been selected under the direction of the Sec-

retary of the Air Force for acquisition by the United States for use in connection with Edwards Air Force Base, Kern County, State of California, and for such other uses as may be authorized by Congress or by Executive Order.

2. A general description of the lands being taken is set forth in Schedule "A", attached hereto and made a part hereof, and is a description of part of the lands described in the Complaint in Condemnation filed in the above-entitled cause.

3. The estate taken for said public uses is the fee simple title, subject, however, to existing easements for public roads and highways, public utilities, railroads and pipe lines.

4. A plan showing the lands taken is annexed hereto as Schedule "B" and made a part hereof.

5. The sum estimated by the undersigned as just compensation for the said lands, with all buildings and improvements thereon and all appurtenances thereto and including any and all interest hereby taken in said lands is set forth in Schedule "A" herein, which sum the undersigned causes to be deposited herewith in the registry of the court for the use and benefit of the persons entitled thereto. The undersigned is of the opinion that the ultimate award for said lands probably will be within any limits prescribed by law on the price to be paid therefor. [7]

In witness whereof, the undersigned, the Assistant Secretary of the Air Force, hereunto subscribes

his name by direction of the Secretary of the Air Force, this 3rd day of February, 1953, in the City of Washington, District of Columbia.

/s/ E. V. HUGGINS,
Assistant Secretary of the
Air Force. [8]

SCHEDULE "A"

The land which is the subject matter of this Declaration of Taking aggregates 360.00 acres, more or less, situate and being in the County of Kern, State of California. A description of the lands taken, together with a list of the purported owners thereof and a statement of the sum estimated to be just compensation therefor is as follows:

Tract L-2040: The West half (W½) of the Northwest quarter (NW¼); the Northeast quarter (NE¼) of the Northwest quarter (NW¼); the West half (W½) of the Southeast quarter (SE¼) of the Northwest quarter (NW¼) of Section 20, Township 9 North, Range 10 West, San Bernardino Meridian, in the County of Kern, State of California, according to the official plat of the survey of said land on file in the Bureau of Land Management.

Containing 140.00 acres, more or less.

Names and Addresses of Purported Owners: E. S. McKendry, Box 37, Edwards, Calif. Florence Lowe Barnes McKendry, Box 37, Edwards, Calif. Desert Aero, Inc., c/o Bertrand Rhine, 729 Citizens

National Bank Building, Los Angeles, Calif. Layne and Bowler Corp., a California corporation, address unknown.

Estimated Compensation: Thirty-Three Thousand Five Hundred Dollars ($33,500.00).

Tract L-2043: The West half (W½) of the Northeast quarter (NE¼); the East half (E½) of the Southeast quarter (SE¼) of the Northwest quarter (NW¼) of Section 20, Township 9 North, Range 10 West, San Bernardino Meridian, in the County of Kern, State of California, according to the official plat of the survey of said land on file in the Bureau of Land Management.

Containing 100.00 acres, more or less. [9]

Names and Addresses of Purported Owners: William Emmert Barnes, Box 37, Edwards, Calif. Florence Lowe Barnes McKendry, Box 37, Edwards, Calif. Desert Aero, Inc., c/o Bertrand Rhine, 729 Citizens National Bank Building, Los Angeles, Calif. Layne & Bowler, Box 8225, Market Station, Los Angeles, Calif.

Estimated Compensation: Twenty-Nine Thousand Dollars ($29,000.00).

Tract L-2071: The Northwest quarter (NW¼) of the Southwest quarter (SW¼) of Section 20, Township 9 North, Range 10 West, San Bernardino Meridian, in the County of Kern, State of California, according to the official plat of the survey of said land on file in the Bureau of Land Management.

Containing 40 acres, more or less.

Names and Addresses of Purported Owners: Benjamin C. Hannam and Kathryn May Hannam, address unknown. E. S. McKendry, also known as E. S. McKenndry, Box 37, Edwards, Calif. Florence Lowe Barnes McKendry, Box 37, Edwards, Calif.

Estimated Compensation: Two Thousand Dollars ($2,000.00).

Tract L-2072: The East half (E½) of the Northeast quarter (NE¼) of Section 20, Township 9 North, Range 10 West, San Bernardino Meridian, in the County of Kern, State of California, according to the official plat of the survey of said land on file in the Bureau of Land Management.

Containing 80.00 acres, more or less. [10]

Names and Addresses of Purported Owners: E. S. McKendry, Box 37, Edwards, Calif. Florence Lowe Barnes McKendry, Box 37, Edwards, Calif. Desert Aero, Inc., c/o Bertrand Rhine, 729 Citizens National Bank Building, Los Angeles, Calif. Layne & Bowler, Box 8225, Market Station, Los Angeles, Calif.

Estimated Compensation: One Hundred Forty Thousand Five Hundred Dollars $140,500.00).

The gross sum estimated to be the just compensation for the estates in the lands hereby taken is Two Hundred Five Thousand Dollars ($205,000.00).

Schedule B—Acquisition Map attached. [12]

[Endorsed]: Filed February 27, 1953.

[Title of District Court and Cause No. 1253-ND.]

DECREE ON DECLARATION OF TAKING

There having been filed and presented to the Court by plaintiff, United States of America, a Declaration of Taking in which the fee simple title in and to the real property hereinafter described, was vested in plaintiff, and good cause appearing therefor, the Court Finds and Decrees as follows:

1. That plaintiff, United States of America, is entitled to acquire the property by eminent domain for use in connection with the Edwards Air Force Base, California, and for such other uses as may be authorized by Congress or by Executive Order.

2. That a Complaint in Condemnation was filed herein at the request of the Assistant Secretary of the Air Force, the authority empowered by law to acquire the land described in said Complaint, and under the direction of the Attorney General of the United States.

3. That in said Complaint in Condemnation and in the Declaration of Taking is a statement showing the authority under which this [13] proceeding was brought and a statement as to the public uses for which said land is being taken and the Assistant Secretary of the Air Force is the person duly authorized and empowered by law to acquire the said land and the Attorney General of the United States is the person authorized by law to direct the institution of this condemnation proceeding.

4. That a statement of the estate or interest in said land is also shown in said Declaration of Taking, and drawings showing the land taken are attached to and made a part of said Declaration of Taking.

5. That a statement of the amount of money estimated by the Assistant Secretary of the Air Force to be just compensation for the taking of said land, namely, the sum of $205,000, is shown by said Declaration of Taking, which sum has been deposited into the registry of this Court.

6. That in said Declaration of Taking is a statement to the effect that the estimated ultimate award of damages for the taking of said property, in the opinion of the Assistant Secretary of the Air Force probably will be within any limits prescribed by Congress as the price to be paid therefor and the Court having fully considered the Complaint in Condemnation and the Declaration of Taking and the statutes made and provided, is of the opinion that plaintiff, United States of America, is entitled to the full fee simple title to the estate hereby taken for the public uses in the land hereinafter described, subject to existing easements for public roads and highways, public utilities, railroads and pipe lines.

7. That the said title is being acquired pursuant to and under the authority of the provisions of the Act of Congress approved February 26, 1931 (46 Stat. 1421; 40 U.S.C., Sec. 258a), and acts supplementary thereto and amendatory thereof, and under the further authority of the Act of Congress

approved August 1, 1888 (25 Stat. 357; 40 U.S.C., Sec. 257); and the Act of Congress approved August 18, 1890 (26 Stat. 316), as amended by the Acts of Congress approved July 2, 1917 (40 Stat. 241) and April 11, 1918 (40 Stat. 518; 50 U.S.C., Sec. 171), which acts [14] authorize the acquisition of land for military purposes; the Act of Congress approved August 12, 1935 (49 Stat. 610, 611; 10 U.S.C., 1343a, b and c), which act authorizes the acquisition of land for air corps stations and depots; the National Security Act of 1947, approved July 26, 1947 (61 Stat. 495); the Act of Congress approved June 17, 1950 (Public Law 564, 81st Congress); and the Act of Congress approved September 6, 1950 (Public Law 759, 81st Congress) which act appropriated funds for such purposes; and acts amendatory thereof or supplementary thereto.

It Is Therefore Ordered, Adjudged and Decreed:

I.

That there is hereby vested in plaintiff, United States of America, the full fee simple title to the estate herein taken for the public uses in the lands hereinafter described, subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines.

II.

That the land taken and condemned in and by this proceeding is situate in the County of Kern, State of California, and is more particularly described as follows:

Tract L-2040: West Half (W½) of the Northwest Quarter (NW¼); Northeast Quarter (NE¼) of the Northwest Quarter (NW¼); West Half (W½) of the Southeast Quarter (SE¼) of the Northwest Quarter (NW¼) of Section 20, Township 9 North, Range 20 West, S.B.B. & M., according to the official plat of the survey of said land on file in the Bureau of Land Management.

Tract L-2043: West Half (W½) of the Northeast Quarter (NE¼); East Half (E½) of the Southeast Quarter (SE¼) of the Northwest Quarter (NW¼) of Section 20, [15] Township 9 North, Range 10 West, S.B.B. & M., according to the official plat of the survey of said land on file in the Bureau of Land Management.

Tract L-2071: Northwest Quarter (NW¼) of the Southwest Quarter (SW¼) of Section 20, Township 9 North, Range 10 West, S.B.B. & M., according to the official plat of the survey of said land on file in the Bureau of Land Management.

Tract L-2072: East Half (E½) of the Northeast Quarter (NE¼) of Section 20, Township 9 North, Range 10 West, S.B.B. & M., according to the official plat of the survey of said land on file in the Bureau of Land Management.

III.

That nothing herein is to be considered as a determination by the Court that the estimate of the Assistant Secretary of the Air Force of the United States of the amount now on deposit, is or is not just compensation for the taking of the said land by plaintiff.

IV.

The Court reserves jurisdiction to enter such further orders and decrees as may be necessary and proper in the premises.

Dated: March 2, 1953.

/s/ LEON R. YANKWICH,
United States District Judge.

Presented by: Walter S. Binns, United States Attorney, A. Weymann, Special Attorney, Lands Division, Department of Justice, by A. Weymann, Attorneys for Plaintiff. [16]

Judgment Docketed and Entered March 2, 1953. [Endorsed]: Filed March 2, 1953.

[Title of District Court and Cause No. 1253-ND.]

NOTICE OF MOTION TO SET ASIDE DECLARATION OF TAKING AND TO VACATE AND SET ASIDE EX PARTE JUDGMENT

To the Plaintiff's Attorneys, Laughlin E. Waters and A. Weymann:

You Will Please Take Notice that on Monday, September 21, 1953, at the hour of 10:00 o'clock a.m. of said day, or as soon thereafter as the matter can be heard, in the United States Courtroom, U. S. Post Office & Court House, Fresno, California, the defendants, Pancho Barnes, E. S. McKendry and William Emmert Barnes, will present the within Motion to Set Aside Declaration of Tak-

ing and to Vacate and Set Aside Ex Parte Judgment.

Dated at Los Angeles, California, this 5th day of September, 1953.

/s/ PANCHO BARNES,
/s/ E. S. McKENDRY,
/s/ WILLIAM EMMERT BARNES,
Defendants in Propria Persona.

[Title of District Court and Cause No. 1253-ND.]

MOTION TO SET ASIDE THE DECLARATION OF TAKING DATED FEBRUARY 27, 1953, AND TO VACATE AND SET ASIDE THE EX PARTE JUDGMENT ENTERED THEREON, DATED MARCH 2, 1953

Come now the defendants, Pancho Barnes, E. S. McKendry, and William Emmert Barnes, and move this Honorable Court set aside the Declaration of Taking dated February 27, 1953, and to vacate and set aside the ex parte judgment entered thereon, dated March 2, 1953, for the following reasons:

I. That the estimate of "just compensation" was not arrived at in good faith and that the declaration and deposit did not comply with the requirements of the statute pertaining thereto.

II. That the Government wilfully and knowingly and deliberately acting in bad faith committed an arbitrary act against the defendants when the Government estimated and deposited a mere nominal

sum and were guilty of noncompliance with statutory requirements.

This Motion will be based upon the "Declaration of Taking" on file and the "Decree on the Declaration of Taking"; on [18] testimony at the time of hearing; affidavits making a prima facie showing of noncompliance with the statute; exhibits proving bad faith in the manner of appraisal of the lands and buildings; and other and sundry documents in support of the Motion.

/s/ PANCHO BARNES,
/s/ E. S. McKENDRY,
/s/ WILLIAM EMMERT BARNES,
Defendants in Propria Persona.

[Endorsed]: Filed September 5, 1953.

[Title of District Court and Cause No. 1253-ND.]

NOTICE OF MOTION TO DISMISS

To the Plaintiff's Attorneys, Laughlin E. Waters and A. Weymann:

You Will Please Take Notice that on Monday, September 21, 1953, at the hour of 10:00 o'clock a.m. of said day, or as soon thereafter as the matter can be heard, in the United States Courtroom, U. S. Post Office & Court House, Fresno, California, the defendants, Pancho Barnes, E. S. McKendry and William Emmert Barnes, will present the within Motion to Dismiss.

Dated at Los Angeles, California, this 5th day of September, 1953.

/s/ PANCHO BARNES,
/s/ E. S. McKENDRY,
/s/ WILLIAM EMMERT BARNES,
Defendants in Propria Persona.

[Title of District Court and Cause No. 1253-ND.]

MOTION TO DISMISS

Come now the defendants, Pancho Barnes, E. S. McKendry, and William Emmert Barnes, and move this Honorable Court that the Complaint on file herein be dismissed for the following reasons:

I. Improper and illegal initiation of the Condemnation Suit.

II. The Statutes are not explicit and lack express legislative power as to the defendants' lands.

III. The Petition is instituted in bad faith and with spiteful and malicious intent and the acquiring agency acted arbitrarily, capriciously, not in compliance with the Statutes and with fraudulent intent, abuse of discretion, and the defendants are informed and believe that there has been misappropriation of the appropriation for Muroc Air Force Base as set forth in Public Law 564, approved June 17, 1950.

This Motion will be based upon the pleadings on file in the within action and upon the Memorandum of Points and Authorities and on such documents,

affidavits, witnesses and arguments as [21] offered in support of the motion.

/s/ PANCHO BARNES,
/s/ E. S. McKENDRY,
/s/ WILLIAM EMMERT BARNES,
Defendants in Propria Persona.

[Endorsed]: Filed September 5, 1953.

[Title of District Court and Cause No. 1253-ND.]

SUPPLEMENTAL AMENDMENT TO MOTION TO SET ASIDE DECLARATION OF TAKING AND TO VACATE AND SET ASIDE EX PARTE JUDGMENT

Come now the defendants, Pancho Barnes, E. S. McKendry and William Emmert Barnes, and by way of amendment to their Motion to Set Aside Declaration of Taking and to Vacate and Set Aside Ex Parte Judgment heretofore served and filed in these proceedings, move this Honorable Court that the Declaration of Taking on file herein be set aside and that the ex parte judgment on file herein be vacated and that other orders and decrees in said proceedings subsequent to the filing of said Declaration of Taking be vacated and set aside for the following reasons:

1. That these proceedings are in violation of the United States Constitution and particularly the Fifth and Fourteenth Amendments thereof.

2. That the United States has not been author-

ized by any Act of Congress to acquire the lands of these moving defendants through these condemnation proceedings.

3. That this proceeding was commenced and has been prosecuted in bad faith and with express malice toward these defendants and each of them [35] and particularly toward defendant Pancho Barnes, and that such express maliciousness was held by the Secretary of the Air Force, the Assistant Secretary of the Air Force and the acquiring agency of the land taken under the declaration of taking and the decree rendered thereon.

That Bernard Evans, acting in bad faith and actual malice, did make the only appraisal of the defendants' property and did not use that degree of skill necessarily required by one of his profession and acting in his capacity. He refused to take time to look at much of the ranch and the many installations thereon. He was slipshod and hurried in his methods. He consumed approximately 11 hours total time in appraisal work on the premises. (One appraiser of the defendants required 13 days on the property to cover its assets.) There was malevolent intent on the part of Bernard Evans in his recommendation to the acquiring authorities and thus to the Secretary of the Air Force. The Assistant Secretary of the Air Force, one Edwin V. Huggins did on the 3rd day of February, 1953, sign a Declaration of Taking with a Schedule "A" attached thereto, which included the sum set as estimated just compensation at $205,000. The Declaration of

Taking filed on February 27, 1953, was followed by a Decree on Declaration signed by Judge Yankwich which was stamped "Judgment docketed and entered March 2, 1953". Subsequently a "temporary injunction" against the defendants was signed by Judge Yankwich which constitutes a further "taking". The information put before Judge Yankwich by way of affidavits and testimony was made in bad faith and with intense malevolent intent by Colonel Akers and Colonel Sacks and other Air Force personnel not for the reason as stated but to hamper and interfere with the defendants' business and in furtherance of other actions to hamper and interfere with the defendants' business.

The Fifth Amendment to the Constitution of the United States states "Nor shall private property be taken for public use without just compensation". There is a strong prima facie case that the amendment has been abused and nullified in this case of United States vs. 360 Acres of Land and a showing of deliberate bad faith in the appraisal and/or recommendation in so much as the United States Government did pay the sum of $593,500.00 [36] for 240 acres of undeveloped desert land as shown in the deed made to them by Macco Corporation recorded May 12, 1953, at the Kern County Recorder's Office (Pancho Barnes' Exhibit No. 10 for identification). This land is adjacent to and approximately ¾ of a mile from the defendants' property but badly located and not even on a road. This property is absolutely unimproved vacant desert land and without water. The defendants' 360

acres of land is highly improved, located on a main highway, has 5 wells (one of which is sufficient to the needs of the property), approximately 40,000 square feet (at the time of condemnation) of buildings. (Reasonable replacement for buildings alone value about $400,000.00). Approximately 100 acres under irrigation, highly improved airport, stock corrals, fences and cross fences. One of the finest rodeo grounds in the United States and two race tracks, landscaping, etc. The $205,000 estimated as "just compensation" is not sufficient money to allow the defendants to remove themselves from the premises let alone of reestablishing themselves to permit a reentering of their same business.

The defendants have been subjected to the most virulent discrimination by the United States Government when it willingly negotiates a settlement of $593,500.00 with Macco Corporation for 240 acres vacant desert land adjacent to the defendants' property and condemns defendants' land of 360 acres of highly developed and productive land for only $205,000.

In his signing of the Declaration of Taking the Assistant Secretary of the Air Force relied and acted on the fraudulent, malevolent, unjust and incorrect recommendation of his agents. The defendants have information and belief that the present Secretary of the Air Force, Harold Talbot, has full knowledge of the proceedings of this case and that by his acquiescence in the matter consciously and deliberately perpetuates the bad faith, malevolence

and arbitrary actions upon which this entire case is predicated..

The defendants requested a salvage value on their property, as is customary in other land acquisitions in the vicinity. Colonel Shuler of the United States Corps of Engineers told the defendants that the appraisal of their property was not sufficiently complete to be able to give them a [37] salvage value. The defendants have a letter dated 3 September, 1953 from Colonel Frye presently District Engineer stating that "the appraisal made on your property did not contain a salvage value on the improvements, and no salvage value has been arrived at since. Therefore, at this time, as in the original offer, this office can give you no salvage figure."

A subpoena duces tecum was served upon J. L. Maritzen to produce in court on October 27, 1953, the appraisal made by the appraiser, Mr. Bernard Evans, who was employed by the United States Corps of Engineers to appraise defendants' property. The appraisal is available to Mr. Maritzen. A Motion to Quash by the plaintiff is still before the Court. In a recent decision by Judge William Mathes it was held that "government confidential files are not necessarily privileged", that a defendant in a condemnation proceeding was entitled to see the appraisal. As the government has refused to proffer the appraisal data the following holds true: Cal. C.C.P. 1963 Sub-section 5. "Evidence wilfully suppressed would be adverse if produced."

That in furtherance of such bad faith and actual malice, as aforesaid, the parties heretofore named and described and the acquiring agency acted and have continued to act arbitrarily and capriciously with express intention of and in the exercise of abusive discretion and contrary to the law and statutes in force and effect.

4. That plaintiff by these proceedings has not intended and does not intend in good faith to acquire the use of the lands belonging to these defendants for any lawful purpose of the United States but, to the contrary, are using these proceedings as a method of evicting these defendants and preventing them from carrying on in said premises.

Said motion will be based upon the pleadings on file, the evidence heretofore introduced to the court in support of the original motion to Set Aside Declaration of Taking and to Vacate and Set Aside Ex Parte Judgment, the memorandum of points and authorities heretofore submitted, and oral argument to be made in behalf of the defendants pursuant to the order of this court. [38]

/s/ PANCHO BARNES,
/s/ E. S. McKENDRY,
/s/ WILLIAM EMMERT BARNES.

[Endorsed] Filed February 23, 1954.

[Title of District Court and Cause No. 1253-ND.]

SUPPLEMENTAL AMENDMENT TO MOTION TO DISMISS

Come now the defendants, Pancho Barnes, E. S. McKendry and William Emmert Barnes, and by way of amendment to their Motion to Dismiss heretofore served and filed in these proceedings, move this Honorable Court that the complaint on file herein be dismissed and that all other orders and decrees in said proceedings subsequent to the filing of said complaint be vacated and set aside for the following reasons:

1. That these proceedings are in violation of the United States Constitution and particularly the Fifth and Fourteenth Amendments thereof.

2. That the United States has not been authorized by any Act of Congress to acquire the lands of these moving defendants through these condemnation proceedings.

3. That this proceeding was commenced and has been prosecuted in bad faith and with express malice toward these defendants and each of them and particularly toward defendant Pancho Barnes, and that such express maliciousness was held by the Secretary of the Air Force, the Assistant Secretary of the Air Force and others whose misrepresentations previous [45] to the filing of condemnation were relied upon and adopted by the Secretary of the Air Force and the Assistant Secretary of the Air Force. Colonel Maxwell and Colonel Gilkey

both acted in bad faith and with malicious intent to harm defendant Pancho Barnes and so informed her of their intentions. Their actions and recommendations resulted in the Secretary of the Air Force and the Assistant Secretary of the Air Force acting according to their recommendations. Colonel Gilkey informed the defendants Pancho Barnes and E. S. McKendry that he had changed the entire plans of the air base with the sole purpose of getting rid of them, which statement was so borne out by the changing of the master plan and by subsequent action that it is logical to assume that the Secretary and the Assistant Secretary of the Air Force acted upon his recommendation which recommendation was made in bad faith. The making of biased and malevolent recommendations through channels to the Secretary of the Air Force was done in an attempt to harm the defendants as distinguished from serving the government and the taxpayers of the country.

That in furtherance of such bad faith and actual malice, as aforesaid, the parties heretofore named and described and the acquiring agency acted and have continued to act arbitrarily and capriciously with express intention of and in the exercise of abusive discretion and contrary to the law and statutes in force and effect.

4. That plaintiff by these proceedings has not intended and does not intend in good faith to acquire the use of the lands belonging to these defendants for any lawful purpose of the United

States but, to the contrary, are using these proceedings as a method of evicting these defendants and preventing them from carrying on and occupying lawful businesses which they are carrying on in said premises.

Said motion will be based upon the pleadings on file, the evidence heretofore introduced to the court in support of the original motion to dismiss, the memorandum of points and authorities heretofore submitted, and oral argument to be made in behalf of the defendants pursuant to the order of this court. [46]

/s/ PANCHO BARNES,
/s/ E. S. McKENDRY,
/s/ WILLIAM EMMERT BARNES,
Defendants in Propria Persona.

[Endorsed]: Filed February 23, 1954.

[Title of District Court and Cause No. 1253-ND.]

MEMORANDUM OF OPINION AND ORDERS

The government deposited with the Clerk of the Court the sum of $205,000 as estimated compensation for the taking of the property in question, which is situated in the vicinity of Edwards Air Base in Kern County, California. After the deposit was made these defendants requested, and were granted, the withdrawal of $194,000. It is clear that the acceptance of such amount constitutes a waiver of objections to the taking.

Defendants' motion to dismiss the action is denied.

Defendants' motion to set aside the declaration of taking is denied.

The government's motion for possession is granted upon the terms hereinafter set forth.

The chief problem of the court is to fix a time at which the government shall take possession of the premises. The government contends that it is faced with a dangerous situation in that the property is in the zone of accidents from high-speed planes which are in training there. The defendants have claimed that there is very little likelihood of such immediate danger; that it would be unfair to dispossess them of the property as the situation now exists and is likely to be for an extended time [49] in the future.

On October 28, 1953, at page 184 of the transcript beginning at line 23, Colonel Akers, Chief of Staff, was a witness on re-direct examination. The following there appears:

"The Court: And where is the work being done now, on this map?

The Witness: You mean the construction work?

The Court: Yes, whatever work is being done for the purpose of completing this runway and this system that you have in mind. Where is the work being done now?

The Witness: The construction work in general

is being done in this area (indicating) on the runway. Around up here on the taxi-way ramp area; and the building area, roads and so forth, up here (indicating), there is construction work.

The Court: And how far would that be from Miss Barnes' property?

The Witness: Offhand, I would estimate it would be in the neighborhood of three miles, statute.

The Court: Now, is there any degree of reasonable likelihood that with the work being done here (indicating), three miles away from her property, that her property or anyone there would be injured?

The Witness: Yes, sir. The likelihood exists, because the aircraft are flying over this area every day."

* * * * *

"The Witness: I am not sure, your Honor, but let me answer it this way: The work with respect to constructing the runway itself, that is, the [50] building of runways or buildings, that is not the work that endangers her property or anyone else's property.

The Court: That is what I want to know.

The Witness: It is the flying of aircraft, the testing of aircraft.

The Court: What I want to find out is the necessity for the immediate possession of the property; and I am trying to determine whether there is any likelihood that there would be injury resulting if it isn't ordered now, or whether it should be ordered at a later time.

The Witness: That is a difficult question to an-

swer, your Honor. I think we went into something like that before.

Naturally we do not want accidents to happen, but our mission, our job, is to test these new airplanes and find out what is wrong with them. In the course of testing, the accidents do occur, may occur at any time in flight, take-off or landing. It may be over the property or somewhere else.

There is that danger of accidents happening at any time, on the property or anywhere else.

The Court: Let me say that I am now referring to Exhibit No. 4 and Enclosure No. 3. Here is the runway, in a northeasterly direction, from B to A.

The Witness: That is the runway being built.

The Court: Being built?

The Witness: That is not the runway in use at the present time.

The Court: Where is the one in use?

The Witness: This one right here (indicating), [51] your Honor, indicated by the dark line.

The Court: This one from B to A is the one being built for future use?

The Witness: That is correct, sir.

The Court: Has there been any work done on that runway yet?

The Witness: Yes, sir. The work on that runway is, I would say, approximately 20 to 25 per cent completed.

The Court: What is the distance between the yellow of Miss Barnes' property and the southwesterly place marked 'B' of the runway which is being now worked on?

The Witness: I would judge it to be in the neighborhood of two or three miles, your Honor.

The Court: When do you expect to do work from 'B' to Miss Barnes' property?

The Witness: Would you mind saying——

The Court: I will ask you what kind of work do you expect to do there?

The Witness: The only work with respect to construction will be the removal of obstructions to flight.

The Court: There will be no runway?

The Witness: That is correct. It is not planned to build a runway across there. In the two-mile clear zone, obstructions to flight will be removed so aircraft can land, if necessary, wheels up, doing a minimum amount of damage; in other words, so they don't run into a telephone pole, ditch or something like that.

The Court: You expect to have jet planes flying there? [52]

The Witness: Yes, sir; not only jet planes, but other flights."

It will be borne in mind that the defendants' property lies southwesterly from the Edwards Air Base, and the ground rules there provide that a take-off of airplanes must be in a northeasterly direction.

There is testimony in the record that the government will not complete the proposed work until December, 1954.

It is my view that the government should have an order of possession.

It is ordered that the defendants shall be required to surrender possession of the premises to the plaintiff at 12:00 o'clock noon May 22, 1954.

In the meantime, and until said surrender of possession, it is ordered that the defendants shall not impede or interfere with or harass the agents of the government who go on the premises for the purpose of preparing for the trial of this proceeding; that such agents shall not enter upon said property for any other purpose; that while on said premises for such purpose they shall not harass said defendants, or any of them, or defendants' servants or agents, and shall not interfere with the defendants' possession or rights in any way, and that they shall restore to its original place any property necessary to be moved in making their investigation.

In the court's opinion the above order of possession is fair and reasonable.

Dated: March 19, 1954.

/s/ C. E. BEAUMONT,
Judge. [53]

[Endorsed]: Filed Mar. 22, 1954. Judgment Docketed and Entered Mar. 23, 1954.

In the United States District Court, Southern District of California, Central Division

Civil No. 15403-C

PANCHO BARNES, Plaintiff,

vs.

JOSEPH STANLEY HOLTONER and MARCUS B. SACKS, Defendants.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above entitled matter having come on for trial on the 13th day of July, 1954, before the Honorable James M. Carter, United States District Judge, sitting without a jury, the plaintiff appearing in propria persona, and the defendants being represented by Laughlin E. Waters, United States Attorney and Max F. Deutz, Assistant United States Attorney, and the Court having granted leave to the plaintiff to file her Second Amended Complaint, and the Court having received evidence both written and oral, and the Court being fully satisfied in the premises, makes its Findings of Fact and Conclusions of Law as follows:

Findings of Fact

I.

That this action was brought in the Superior Court of Los Angeles [54] County, California as Case No. 611723 and removed to the United States

District Court for the Southern District of California, Central Division, on the motion of the United States Attorney, as counsel for the defendants.

II.

That the plaintiff since 1945 has been engaged in operating a diversified ranch and guest ranch, complete with a restaurant and bar, in Kern County, California, in the vicinity of Edwards Flight Test Center. Plaintiff has operated the ranch since 1933.

III.

That said guest ranch was patronized by military personnel, civilian employees of Edwards Flight Test Center, and civilian contractors and aircraft factory personnel having said Test Center as their place of employment.

IV.

That the defendant, Joseph Stanley Holtoner, is now, and since February 18, 1952 has been, the Commanding Officer at Edwards Flight Test Center; that Marcus B. Sacks is, and during the same period has been, the Staff Judge Advocate and Legal Officer at Edwards Flight Test Center.

V.

That there was no conspiracy on the part of the defendants to injure the plaintiff's business; that there were no intentional acts committed by the defendants to the detriment of the plaintiff's business.

VI.

That the defendant, Joseph Stanley Holtoner,

made no attempt to put the plaintiff's place of business out of bounds or off-limits to military personnel at Edwards Flight Test Center; that said Joseph Stanley Holtoner did not infer or cause inferences to be made to, military or civilian personnel to "stay away" from the plaintiff and/or her place of business.

VII.

That there was no conspiracy between the defendants and Colonel Marion J. Akers, Colonel Malcolm P. Elvin, First Lieutenant James C. Ratcliffe, Edward Carroll, or any of them, to molest, obstruct, hinder and/or prevent plaintiff from carrying on her business and/or making a living. [55]

VIII.

That on or about February 20, 1952, at a staff meeting held at Edwards Flight Test Center, a suggestion was made by someone, not General Holtoner, that the place of business of the plaintiff be placed out of bounds or off-limits; that the matter was discussed in said staff meeting and that a determination was made at that time that the place of business of the plaintiff would not be put out of bounds or off-limits.

IX.

That the Air Base Combo, a small orchestral group, which had been accustomed to play on off duty hours for pay at the plaintiff's guest ranch, did not play at said ranch on the night of February 20, 1952; that there was no formal order directing said Air Base Combo not to play at the plaintiff's ranch

on that night; that there is no evidence of any order or directive by either of the defendants that said Air Base Combo should not play at the plaintiff's ranch; that after the one occasion of failure to play on February 20, 1952, the Air Base Combo thereafter regularly filled any engagements it had to play at the plaintiff's ranch.

X.

That the defendants did not, either individually or in concert, act or conspire between themselves or with any other persons, to threaten, intimate, or by intimidation indicate, that any military or civilian personnel of Edwards Flight Test Center patronizing the plaintiff's place of business would be prevented from attaining advancement in rank or employment or that efficiency ratings would be adversely effected or that the tenure of employment of civilian employees would be endangered; that there is no evidence of any instance in which any military personnel or civilian employees were deprived of advancement in rank or employment, adversely effected in efficiency ratings, or endangered as to tenure of civilian employment by reason of having patronized the plaintiff's ranch.

XI.

That Joseph Stanley Holtoner made a statement to the effect that the plaintiff's ranch should be bombed; that said statement was made either in [56] anger or in jest and without deliberation or intent to carry out the action implied therein; that

the plaintiff's ranch was not bombed nor were there any threatening acts or gestures made in furtherance of this verbal statement; but a fire of unknown origin destroyed five buildings, including the ranch house on November 14, 1953.

XII.

That Marcus B. Sacks made a statement to the effect that the plaintiff's ranch should be bombed; that said statement was made either in anger or in jest and without deliberation or intent to carry out the action implied therein; that the plaintiff's ranch was not bombed nor were there any threatening acts or gestures made in furtherance of this verbal statement.

XIII.

That there is no causal connection between the statements of Joseph Stanley Holtoner and Marcus B. Sacks as set forth in Findings XI and XII, and any alleged damage which the plaintiff suffered; that there is no proof that any of the plaintiff's guests left her ranch through fear of any action on the part of either of the defendants; that there is no evidence of any night, or other, dynamiting done in the vicinity of the plaintiff's ranch, by military or civilian employees or contractors of Edwards Flight Test Center, done in anything other than the normal course of business in the operation of the military establishment and its environs.

XIV.

That the defendants did not, either alone, or in

concert with each other, or with any other persons, act or conspire to advise any persons, military or civilian, that the plaintiff had sold her ranch to the Government and was no longer in business.

XV.

That there was no impropriety or immorality involved in the plaintiff's operation of her guest ranch, known to or condoned by plaintiff; that the defendants, or either of them, did not make any statements or insinuations to anyone, military or civilian, that the plaintiff's conduct of her guest ranch operations was improper or immoral; that no acts or statements of the [57] defendants hurt the plaintiff's reputation among respectable people and/or attracted undesirable people to the premises of the plaintiff.

XVI.

That the Department of Justice authorized the use of the Federal Bureau of Investigation in investigating certain aspects of this litigation; that the use of the Federal Bureau of Investigation was within the authority of the Attorney General of the United States; that the Court refused to take proof as to the course or nature of the precise investigation made by the Federal Bureau of Investigation.

XVII.

That the plaintiff has been, for a period of some years, a base contractor doing contract business on Edwards Flight Test Center; that part of her con-

tracting business was to contract for the hauling of garbage for her hog ranch; that the defendants did not act together or conspire or act individually in any way to prevent the plaintiff from securing a renewal of her contracts or to cause the plaintiff to be overlooked at the time of the issuance of bids for said contracts; the Court further finds that the husband of the plaintiff, E. S. McKendry, was awarded the contract for hauling garbage to the plaintiff's hog ranch on the particular occasion of which the plaintiff complains in her complaint.

XVIII.

That certain military and civilian personnel of Edwards Flight Test Center attempted to form a riding club for recreational purposes; that the members of said club originally contemplated using the facilities of the plaintiff's ranch, including her Pancho's Happy Bottom Riding Club; that the organizers of the riding club from the Test Center, for reasons of their own, decided not to use the plaintiff's facilities; that thereafter, members of the riding club, then being formed, petitioned the military authorities at Edwards Flight Test Center for permission to have an organized club under the authority and sponsorship of the military establishment; that permission to form such a club was refused on the ground, among others, that to form such a club would actually be in competition with the activities of the [58] plaintiff who had horses for hire and club activities in the near vicinity, whereas many of the members of the club contemplated the use of

their own horses; that the disapproval of the club was in no way brought about by malice or animosity on the part of the defendant, Joseph Stanley Holtoner, or any other person in the military establishment.

XIX.

That the defendants refused to permit Constable Hodges of Mojave to make a service of process on General Holtoner at the Edwards Flight Test Center; that said action was the result of a misunderstanding of the existing law as to jurisdiction of the service of process on the part of Joseph Stanley Holtoner and Marcus B. Sacks; that in the preliminary proceedings in this action, involving removal to the District Court, the defendants were admonished and cautioned by this Court as to the manner in which they should submit to the service of process; that thereafter there have been no further misunderstandings as to the service of process; that after such admonition there has been no discipline, punishment, or recrimination against the civilian employee, Clifford Morris, who actually made service of process upon General Holtoner in a restricted area at Edwards Flight Test Center; that Clifford Morris was frightened and intimidated by the defendant Sacks at the time of his service of process on General Holtoner prior to the admonition of the Court above referred to, but there was no conspiracy between the defendants and Ed Carroll, or any other person, to frighten or intimidate Clifford Morris in connection with the service of process.

XX.

That Joseph Stanley Holtoner did ignore a subpoena directed to him from the Superior Court to attend a deposition; that said subpoena was ignored because the case was in the process of being removed to the United States District Court.

XXI.

That the defendants did not conspire together and/or contrive to illegally cut off the main county road running by the plaintiff's place of business.

XXII.

That the defendants, together with Colonel Marion J. Akers, or otherwise, did not conspire or act individually to have Malcolm P. Elvin, or any other person, inform the Automobile Club of Southern California that they were not to include the plaintiff's place of business on the club maps; that the testimony of the representative of the Automobile Club of Southern California clearly showed no attempt by anyone in the military establishment to influence or dictate the manner of preparation of maps of that organization.

XXIII.

That there was no conspiracy between the defendants and Colonel Akers, or any other person, to obtain an unnecessary and/or premature "Order of Possession" of the plaintiff's property; that there was no perjury or false statements on the part of Colonel Akers.

XXIV.

That the defendants, or either of them, did not conspire with any persons to harass and hurt the plaintiff, as alleged in Paragraph XVIII of plaintiff's Second Amended Complaint; that certain photographs were taken of the plaintiff's premises in connection with the condemnation proceedings.

XXV.

That there was no conspiracy on the part of the defendants between themselves or with any other persons to commit a trespass on the property of the plaintiff; that at the time of the alleged trespass set forth in Paragraph XXIX of plaintiff's Second Amended Complaint, title to the property in question had already vested in the United States of America under a Declaration of Taking in the condemnation proceedings; that there was no perjury or improper acts upon the part of Lieutenant Colonel Sacks or Colonel Akers in connection with these matters.

XXVI.

That there was no conspiracy between the defendants and Lieutenant Ratcliffe to blacken the reputation of the place of business of the plaintiff; that the Court has no reason to disbelieve the testimony of Lieutenant Ratcliffe as to the events at the plaintiff's ranch to which he testified; [60] that there is no evidence, however, that the plaintiff had knowledge of the fact that said events transpired.

XXVII.

That there was no conspiracy between the defend-

ants, or any individual acts by either of them, to misuse or misquote testimony of Air Force Warrant Officer Tony Padavich.

XXVIII.

That in July of 1952, the Aviation Writers of America held a convention in Los Angeles and visited the Edwards Flight Test Center; that after spending the greater part of the day at Edwards Flight Test Center, where flight demonstrations were given and exhibits displayed, some of those in attendance at the convention visited the ranch of the plaintiff for a dinner or banquet staged there; that there is some evidence that the proceedings at the plaintiff's ranch were somewhat abbreviated due to changes in schedules of transportation and delays in completing the flight exhibition at Edwards Flight Test Center; that there is no evidence of any deliberate intent or act on the part of the defendants, or anyone in the military establishment, to hurt the business of the plaintiff or to interfere with her banquet activities.

XXIX.

That there is no evidence submitted as to the net profits or losses of the plaintiff in the operation of her ranch activities prior to and during the period of the alleged acts complained of in plaintiff's Second Amended Complaint, but that plaintiff waived, at the start of the trial, any claim for damages in excess of $10.00 from each defendant; that there was evidence that plaintiff's gross income dropped

off after General Holtoner took command of the base.

XXX.

That the Court finds that the plaintiff, Pancho Barnes, is a courageous, forthright individual, a Native Daughter of California, a person with apparent great interest in the conduct and well being of the Air Force; that Joseph Stanley Holtoner is a general officer of the United States Air Force; [61] that he apparently enjoys an excellent military record; that he had probably never encountered a public relations problem such as that dealing with the plaintiff; that he had or assumed duties as Base Commander in relation to the condemnation of the plaintiff's land which unfortunately aggravated the situation; that the over-all evidence in this case indicates a condition of mutual aggravation rather than malice or animosity on the part of any of the parties.

XXXI.

That this Court makes no findings of fact as to the truth of any of the allegations in the pleadings except as expressly set forth herein.

Conclusions of Law

From the foregoing Findings of Fact the Court makes the following Conclusions of Law:

I.

That there was no conspiracy between the defendants, or in conjunction with any other persons, to injure the plaintiff in her business reputation.

II.

That there were no tortious acts on the part of the defendants directed toward the plaintiff or any of her business activities.

III.

That all of the activities of the defendants in conjunction with the plaintiff and/or her ranch activities were either actually, or honestly believed by them to be, within the scope of their duties as members of the United States Air Force.

IV.

That judgment should be entered for the defendants, each party to bear its own costs.

Let judgment be entered accordingly.
9/22/54.

/s/ JAMES M. CARTER,
United States District Judge. [62]

Affidavit of Service by Mail Attached. [63]

[Endorsed]: Filed Sept. 23, 1954.

[Title of District Court and Cause No. 15403-C.]

JUDGMENT

The above entitled matter having come on for trial on the 13th day of July, 1954, before the Honorable James M. Carter, United States District Judge, sitting without a jury, the plaintiff appearing in propria persona, and the defendants being represented by Laughlin E. Waters, United States Attorney and Max F. Deutz, Assistant United States Attorney, and the Court having granted leave to the plaintiff to file her Second Amended Complaint, and the Court having received evidence both written and oral, and the Court being fully satisfied in the premises, and the Court having made and filed its Findings of Fact and Conclusions of Law:

Now Therefore, It Is Hereby Ordered, Adjudged and Decreed that the defendants have judgment; that the plaintiff take nothing; that each party [64] bear its own costs.

Dated at Los Angeles, California this 22nd day of September, 1954.

/s/ JAMES M. CARTER,
United States District Judge. [65]

Affidavit of Service by Mail Attached. [66]

[Endorsed]: Judgment Filed, Docketed and Entered Sept. 23, 1954.

United States Court of Appeals
for the Ninth Circuit

No. 14,380

E. S. McKENDRY and PANCHO BARNES,
Appellants,

vs.

UNITED STATES OF AMERICA, Appellee.

Appeals 1 and 2—Jan. 31, 1955

OPINION

Upon appeals from the United States District Court for the Southern District of California, Northern Division.

Before: Stephens, Fee and Chambers, Circuit Judges; James Alger Fee, Circuit Judge:

There are here pending two appeals from orders in connection with the condemnation of fee simple title to three hundred sixty acres of land in Kern County, California, which is owned by appellants. The declared purpose of the taking was that this realty would be used in the expansion of Edwards Air Force Base. On February 27, 1953, complaint in the action and declaration of taking were filed.[1] The estimated just compensation for the taking of this parcel, deposited concurrently in the registry of the court, was $205,000.00. An order vesting title

[1] 40 U.S.C.A. § 258(a).

in the United States pursuant to the filing of the declaration was entered March 2, 1953.

Upon motion of appellants, the court ordered $194,402.73 paid from the sum on deposit on their account.[2] Thereafter, when the [67] United States had filed a motion for immediate possession of the parcel, appellants moved to set aside the declaration of taking and the judgment entered pursuant thereto, and at the same time moved to dismiss the condemnation proceeding. Both these motions were denied by Hon. Campbell Beaumont, district judge, on March 23, 1954, and at the same time it was ordered that the premises should be surrendered on May 22, 1954. On May 10, 1954, a minute order was entered confirming the previous holding, but postponing time for surrender until July 24, 1954. These appeals were taken from the orders of March 23, 1954 and May 10, 1954.

The government urges that the appeal is premature and should be dismissed, since no final order is involved.[3] A denial of a motion to dismiss alone never lays foundation for review in federal appellate courts. As far as the vesting of title is concerned, that depends upon final judgment in the

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[2] "Upon application of the parties in interest, the court may order that the money deposited in court, or any part thereof, be paid forthwith * * *." 40 U.S.C.A. § 258(a).

[3] The latest opinion of this Court on final orders is Libby, McNeill & Libby vs. Alaska Industrial Board, 9 Cir., 215 F.2d 781.

proceeding. It is not necessarily irrevocable inasmuch as procedure is provided to set aside the investment by consent properly entered.[4] Unquestionably, the title could be revested in the former owner upon a finding of fraud or lack of jurisdiction. For "* * * title is not indefeasibly vested in the United States merely by following the administrative procedure." Cf. Catlin v. United States, 324 U.S. 229, 242. Therefore, the appeals must be dismissed. Polson Logging Co. v. United States, 9 Cir., 149 F.2d 877.

The government goes further and makes an alternative motion for affirmance of the judgment because appellants drew down part of the money deposited with the declaration. But the statute above cited was passed for the express purpose of allowing the government possession and use of the land involved without [68] awaiting termination of interminable litigation.[5] To be fair, the government had

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[4] There is express procedure for revesting of title in the former owner by consent. "In any condemnation proceeding instituted by or on behalf of the United States, the Attorney General is authorized to stipulate or agree in behalf of the United States to exclude any property or any part thereof, or any interest therein, that may have been, or may be, taken by or on behalf of the United States by declaration of taking or otherwise." 40 U.S.C.A. § 258f.

For comparison, see United States vs. 44.00 Acres of Land, 110 F. Supp. 168.

[5] "The two principal purposes of Congress, in making provision in the Declaration of Taking Act for the estimating of just compensation and the depositing of the amount thereof in court, undoubtedly were to minimize the interest burden of the

to accord to the landowner the use of the money which stood in place of the land during pendency of the proceedings. Otherwise, the law would have been an instrument of oppression. Cf. United States vs. Richardson, 5 Cir., 204 F.2d 552. Congress clearly recognized the necessities on each the part of the government and the landowners.

It would be anomalous to say that the landowner must wait until final judgment to appeal from the steps to acquire title and from the judgment on the declaration, and yet he is precluded from the appeal because he has applied for and received a portion of the fund placed there for his use instead of the land which the government is using. Of course, title would not be divested unless the landowner returned the money.

The government is on the horns of a dilemma. Either the order vesting title can be reviewed upon appeal from final judgment or the order is final and can now be appealed.

The appeals are premature and are dismissed.

[Endorsed]: Opinion. Filed Jan. 31, 1955. Paul P. O'Brien, Clerk. [69]

Government in a condemnation proceeding, and to alleviate the temporary hardship to the landowner and the occupant from the immediate taking and deprivation of possession. United States v. Miller, 317 U.S. 369, 381, 63 S.Ct. 276, 283, 87 L.Ed. ...; Atlantic Coast Line R. Co. v. United States, 5 Cir., 132 F.2d 959." United States vs. 1997.66 Acres of Land, 8 Cir., 137 F.2d 8, 11.

[Title of Court of Appeals and Cause No. 14,380.]

Appeal 3—Jan. 31, 1955

OPINION

Upon appeal from the United States District Court for the Southern District of California, Northern Division.

Before: Stephens, Fee and Chambers, Circuit Judges; James Alger Fee, Circuit Judge:

In the condemnation case in which we this day have dismissed other appeals the declaration of taking procedure was followed and the court entered judgment declaring the title to be vested in the United States. The government, however, did not enforce its right to possession of the lands, but permitted the former owners to occupy the parcel involved.

On August 29, 1953, the United States filed a motion for an order of immediate possession. Appellants filed a motion to dismiss the action and a motion praying for a setting aside of the declaration of taking and the judgment vesting title. During the pendency thereof, they began to construct buildings on the parcel to which the court had adjudged title to be in the United States pursuant to the declaration and deposit of estimated just compensation.

On February 2, 1954, there was filed a motion for a temporary restraining order to prevent the continuance of such construction on behalf of the government. The motion was granted, and appellants were

ordered to show cause why a temporary injunction [70] should not issue. An order granting a temporary injunction entered February 15, 1954.

This appeal was taken from that order on March 17, 1954.

On August 7, 1954, it is shown to this Court, appellants surrendered possession of the premises.

The order of temporary injunction based upon the continuing possession and use of the parcel by appellants became functus officio upon surrender. Appeals from the final judgment will lie to review any error relative to the transfer of title of which the landowners may legally complain.

The appeal here is dismissed because this particular controversy is moot.

[Endorsed]: Opinion. Filed Jan. 31, 1955. Paul P. O'Brien, Clerk. [71]

[Title of District Court and Cause No. 1253-ND.]

NOTICE OF MOTION TO DISMISS

To The Plaintiff's Attorney, Laughlin E. Waters:

You Will Please Take Notice that on Monday, May 2, 1955, at the hour of 10:00 o'clock a.m. of said day, or as soon thereafter as the matter can be heard, in the United States Courtroom, U. S. Post Office & Court House, Fresno, California, the defendants, Pancho Barnes, E. S. McKendry and

William Emmert Barnes, will present the within Motion to Dismiss.

Dated at Los Angeles, California, this 22nd day of April, 1955.

/s/ PANCHO BARNES,
/s/ E. S. McKENDRY,
/s/ WILLIAM EMMERT BARNES,
Defendants in Propria Persona. [72]

[Title of District Court and Cause No. 1253-ND.]

MOTION TO DISMISS

Come now the defendants, Pancho Barnes, E. S. McKendry, and William Emmert Barnes, and move this Honorable Court that the Complaint on file herein be dismissed for the following reasons:

I. That the Secretary of the Air Force and the Assistant Secretary of the Air Force acted arbitrarily and capriciously and without adequate determining principle, was unreasoned, and acted in bad faith when they instituted the condemnation suit.

II. That fraudulent misrepresentations were made to Congress regarding the properties to be condemned.

III. That Public Law 564 approved June 17, 1950 did not include the subject property nor did any other Public Law as mentioned in the Complaint include said property.

IV. That said property was not necessary to the expansion of the Edwards Air Force Base and no public use was intended or planned for the subject property.

V. That this Court lacks jurisdiction of the condemnation suit [73] because the property was obviously not included in the Statutes under which the Condemnation Suit was instituted.

VI. That agents of the Air Force directed by higher headquarters and or the Secretary of the Air Force, did so harass the defendants, and did harm their business in attempts to discourage and sicken them to the point that they would be willing to leave and sell out without the benefit of the due process of law.

VII. The Secretary of the Air Force has attempted to attain his ends without granting the defendants their rights under the Constitution and particularly the V Amendment.

This Motion will be based upon the pleadings on file in the within action and upon the Memorrandum of Points and Authorities and on such documents, affidavits, witnesses and arguments as offered in support of the motion.

/s/ PANCHO BARNES,
/s/ E. S. McKENDRY,
/s/ WILLIAM EMMERT BARNES,
Defendants in Propria Persona. [74]

Acknowledgment of Receipt of Copy Attached.

[Endorsed]: Filed April 22, 1955.

[Title of District Court and Cause No. 1253-ND.]

NOTICE OF MOTION TO SET ASIDE DECLARATION OF TAKING AND TO VACATE AND SET ASIDE EX PARTE JUDGMENT

To The Plaintiff's Attorney, Laughlin E. Waters:

You Will Please Take Notice that on Monday, May 2, 1955, at the hour of 10:00 o'clock a.m. of said day, or as soon thereafter as the matter can be heard, in the United States Courtroom, U. S. Post Office & Court House, Fresno, California, the defendants, Pancho Barnes, E. S. McKendry and William Emmert Barnes, will present the within Motion to Set Aside Declaration of Taking and to Vacate and Set Aside Ex Parte Judgment.

Dated at Los Angeles, California, this 22nd day of April, 1955.

/s/ PANCHO BARNES,
/s/ E. S. McKENDRY,
/s/ WILLIAM EMMERT BARNES,
Defendants in Propria Persona. [79]

[Title of District Court and Cause No. 1253-ND.]

MOTION TO SET ASIDE THE DECLARATION OF TAKING DATED FEBRUARY 27, 1953, AND TO VACATE AND SET ASIDE THE EX PARTE JUDGMENT ENTERED THEREON, DATED MARCH 2, 1953

Come now the defendants, Pancho Barnes, E. S. McKendry, and William Emmert Barnes, and move this Honorable Court set aside the Declaration of Taking dated February 27, 1953, and to vacate and set aside the ex parte judgment entered thereon, dated March 2, 1953, for the following reasons:

I. That the Secretary of Air and his subordinates did wrongfully use and abuse the Declaration of Taking Act. Did wilfully, arbitrarily, capriciously and without reasonable or adequate determining principle and acting in bad faith did invoke the use of the Declaration of Taking Act. (a) That fraudulent misrepresentations were made to Congress regarding the properties to be condemned. (b) That Public Law 564 approved June 17, 1950, did not include the subject property nor did any other Public Law as mentioned in the Complaint include said property. (c) That said property was not necessary to the expansion of the Edwards Air Base and no public use was intended or planned for the subject property. [80]

II. That the Declaration of Taking was filed on February 27, 1953 and an Ex Parte Judgment was rendered on March 2, 1953 without any notice being given to any of the Defendants by the Government. Nor did each or any of the Defendants have any knowledge that the Government was acquiring an Ex Parte Judgment against their property. Said Decree and or Judgment was unconstitutional and was in violation of the V Amendment and was not according to due process of law; and was unnecessary to the Administrative procedure regarding the filing of a Declaration of Taking.

III. That the estimation of "Just Compensation" was made in bad faith. The estimate of just compensation was on its face plainly inadequate. The estimate was a mere nominal sum related to the overall value of the property. The actions on the part of the Acquiring Authority in their arbitrarily and capriciously act of bad faith amounted to a non-compliance with the statute.

IV. The Secretary of the Air Force has attempted to attain his ends without granting the defendants their rights under the Constitution and particularly the V Amendment.

This Motion will be based upon the "Declaration of Taking" on file and the "Decree on the Declaration of Taking"; on testimony at the time of hearing; affidavits making a prima facie showing of non-compliance with the statute; exhibits proving bad faith in the manner of appraisal of the lands

and building; and other and sundry documents in support of the Motion.

/s/ PANCHO BARNES,
/s/ E. S. McKENDRY,
/s/ WILLIAM EMMERT BARNES,
Defendants in Propria Persona. [81]

Acknowledgment of Receipt of Copy Attached.

[Endorsed]: Filed April 22, 1955.

[Title of District Court and Cause No. 1253-ND.]

AFFIDAVIT OF PANCHO BARNES AND E. S. McKENDRY

Pancho Barnes and E. S. McKendry, being first duly sworn, depose and say:

That they are defendants in the above entitled action;

That the government had made an appraisal of the subject property by one Bernard Evans during the Spring of 1952. Mr. Evans was on the property briefly, visiting it and giving it a haphazard and cursory inspection. He arrived late the first day and returned for a few hours on the next day. He did not go over the property very thoroughly. He refused to look at much of the property which he was requested to see by Mr. McKendry.

In the latter part of August, 1952, Mr. Joe Maritzen, Chief of the Acquisition Branch of the Los Angeles District Corps of Engineers, made an offer

for the property in the sum of $205,000.00. This offer was immediately and promptly turned down by these affiants. No other offer was ever made at any time and these affiants did inform Mr. Maritzen at this time that they did oppose the taking of the property.

These affiants further informed Mr. Maritzen at this time that they had turned down on two occasions bona fide offers from two separate parties in the amount of $1,500,000.00 for the property. They explained to Mr. Maritzen that they [83] believed that the appraisal had been lax and slipshod and could not conceive of how he had arrived (if he had arrived) at such an inadequate and disgraceful sum.

These affiants further say that the government and the appraiser did not even know the correct acreage of the property. That because of sectional variation the property consisted of several more acres (approximately six) than the government took *cognizant* of.

A prima facie showing of the value of the property shows some 40,000 square feet of buildings, a reasonable replacement value of which would be $12.00 per square foot; a swimming pool complete with filter system, steam boiler and heating plant and built into symetrical and artistic design, being some 40 foot across to the east and west and approximately 8 to 10 feet wider to the north and south, with a depth starting with the ramp at zero degrees and being approximately 9 feet in depth, and lighted by underwater lights. Said pool and

equipment would be worth approximately $20,000.00.

The property had 5 wells with such abundant water that, including the irrigation of approximately 100 acres of crops and other demands for domestic water and water for the stock, only one well was necessary to supply the demands.

The buildings above referred to consisted of a hotel building with 20 units, each complete with bath, and a manager's apartment with bath and kitchenette, a library, tower, service rooms and administrative offices. The hotel building was constructed in a "U" shape and had a massive ornamental rock foundation with several tiers of waterfalls extending some 12 feet in the air and flanked with fish ponds, a total length of approximately 54 feet long and 2 to 3 feet deep and varying in width from 5 to 10 feet. The garden was landscaped and planted with flowers, cactus, shrubbery and trees.

There was a restaurant adequate to handle large parties and in fact on occasions several thousand people were catered to from this restaurant and dining rooms. There were 2 bars, a small one with an open fireplace which served as a combination guest-living room and bar. The big bar was situated in the dance hall. The bar itself was approximately 45 feet long. The building in which it was situated was approximately 55 feet wide by 65 feet long, the ceiling was approximately 14 feet high. This room was lavishly decorated and contained a 30 feet wide by [84] 16 feet long mural (because

of the alcove-shape of this mural it actually had more area than the height of the ceiling). There were other pictures and decorations of a permanent nature.

The club house had many rooms for storage, living quarters and lavatories.

There was a women's dormitory for the female help, 7 bungalows and/or houses for the accommodation of help and they were sometimes also rented to guests.

There was also the owner's house in which the affiants lived which was a very fine house indeed, consisting of a large living room, 4 bedrooms, 2 baths and incidental rooms. Adjacent to this building was a large recreation building used exclusively by the owners and referred to as the summer kitchen. Adjacent also to the owners' house were the dog kennels and the owners' chicken houses and yards.

Another substantial building on the ranch consisted of the dairy barn complete with automatic milking machines, feed rooms, laboratory for milk testing, etc., together with the creamery building consisting of a large bottle washing room, the milk room itself, large ice boxes, walk-in deep freeze large enough to hold some 6 or 8 whole beef carcasses, vegetable room, etc.

Large implement building and implement sheds for farm machinery.

The entire plant for hog raising and feeding con-

sisting of pens, shelters, large concrete feeding platforms, water systems.

Complete rodeo grounds; an arena of approximately 355 feet long and more than 100 feet wide. There were permanent grandstands on one side of the arena and concrete box seats on the "shady side" of the arena. The arena had 8 bucking chutes, calf chute and team roping chute, had an announcer's stand, approximately 20 feet high sufficient to accommodate some 10 or 12 people. Adjacent and leading into the bucking chutes was a considerable stock yard with some 7 or 8 pens of varying sizes, all arranged with stock gates that would permit the moving of stock in the same manner as done in the Los Angeles Union Stock Yards, together with alley-ways for segregating stock into the various bucking chutes. On the opposite end of the arena were large and adequate "holding" pens for cattle and horses and the entire arena was brilliantly lit in such a manner [85] that when night performances were given the cowboys' ropes did not cast a shadow. The overhead lighting alone had a value of in excess of $12,000.00.

There were 2 race tracks consisting of an oval track of 3 furlongs leading into the straightaway track of one-half mile. This track was all professionally fenced and leaned away from the track so that the riders would not be hit or injured on the fence when horse races were being run.

In addition to the corrals at the rodeo grounds, there were heavy cyclone fence horse pens to ac-

commodate brood mares and stallions. A portion of the alfalfa fields were also fenced appropriately to protect young foals so that they could be turned out with their mothers for green pasture.

There were approximately 100 acres of alfalfa hay irrigated by underground concrete pipes, valves and checks.

There were some 366 shades trees on the ranch, some of which were more than 25 years old, consisting of many varieties, cottonwood and Arizona cypress predominating, as well as ornamental shrubs, approximately 1500 lineal feet of cane windbreaks, etc.

Other incidental structures, such as additional dog kennels as distinguished from the ones close to the owners' house, tack room, etc.

The main well was run by electricity with a large diesel standby engine housed in a diesel house and supplied by a 10,000 gallon oil storage tank and with lines to the steam boiler, which was sufficient to supply heating for the swimming pool, sterilizers for the dairy, and steam for cooking of the hog food or garbage. Adjacent to the diesel pump house was the carpenter's shop.

Adjoining the club house was a 20,000 gallon concrete domestic water tank together with a pump house to house the pressure systems. Around the club house, hotel buildings, etc. there was much flagstone and brick pavements and walkaways, the swimming pool patio was fenced and a large arbor and sundeck was on one side of the pool.

There was also the entire layout for a new horse barn, including all of the roughed in plumbing and cesspools completed for 3 bathrooms.

There was a great deal of fencing and cross fencing.

The ranch was supplied with a Lancaster telephone, the main office of [86] which was 23 miles away. 8 miles of this telephone line was privately run at the affiants' expense in order to be able to have telephone service at the ranch. The ranch was equipped with several phones, including a public pay phone.

There was a very expensive and fine cattle guard at the front entrance of the ranch and the adjoining territory had excellent grazing in the spring of the year and was open range and worth a great deal to the owner in feeding horses and cattle.

The airport was one of the finest in the entire country, having 3 separate runways, the main runway being 400 feet wide and adaptable to handle ships such as DC-3's. Many military aircraft landed on the field, including P-38's, P-40's and P2-V's, etc. The field was more than adequate to handle average air traffic. The field was lit at night, had gasoline and all servicing facilities. The main hangar consisted of sufficient space to accommodate some 10 private aircraft, had a large and adequate shop, class rooms for students, lounge room, offices, pilot's ready room, 360 degree control tower, 8 bedrooms and men's and women's lavatories consisting of several basins, urinals and toilets. The hangar

overall 80x80 feet and constructed with Summerbell trusses and was of beautiful and artistic design, including porches for shade on both sides and large windows for lighting the various rooms. There was a smaller hangar and shop and a third hangar for storage.

The entire plant comprised practically a small village and was adequate in every respect. The soil was as fine as any soil within the entire Antelope Valley and had been conscientiously and carefully tended and fertilized over a period of 20 years as almost all of the crops raised on the place were returned to the soil by the manure spreader.

The ranch was situated on the main road leading from Rosamond to Muroc, which highway was paved. Whereas there were 2 additional public roads on either side of the property.

The affiants are cognizant of the fact that the government did pay $593,500 for only 240 acres of barren desert land, without water or any improvements whatsoever, approximately ¾ of a mile to the south of their property and not adjoining any road, within a month or two of the time when the government filed their fantastic condemnation suit on these affiants on their some 366 acres of highly improved land with abundant water and every facility.

Insomuch as the affiants did turn down 2 bona fide offers, one in 1950 and the other in October, 1952, each in the sum of $1,500,000, even the roughest calculation of the highly improved acreage and

the approximate 40,000 square feet of buildings plus all of the other assets of the ranch as above mentioned, plainly and undoubtedly show that the government made their offer in bad faith and that the offer was a mere nominal sum compared with the true value of the property.

Representatives of the government have verbally from time to time admitted that the appraisal was unfair and inadequate. Colonel Shuler, when he was still the District Engineer, made the remark that the government couldn't possibly go to court with that appraisal.

Mr. Weymann, the Assistant United States Attorney in the Lands Divisions, previously in charge of the affiants' case, remarked on several occasions that the offer was plainly inadequate.

In the winter of 1953-54 the affiants did cover the arbor adjoining the swimming pool with an impervious temporary cover of celluglass to protect the winter swimmers from the wind and the government did bring an injunction against the affiants which proceedings were heard on Friday, February 5, 1954 in the Court at Fresno, California, the Honorable Leon R. Yankwich presiding, at which time Mr. Weymann, the government attorney, did state on page 55 of the transcript, beginning at line 16: "Our position is this: that the Government, as the owner of that property, has the absolute right to have the status quo maintained until the determination of this action. Not only because of the expense, whether it be great or small, in demolishing these

structures eventually, but because of the difficulty of having a proper appraisal made.", which is an admission that the government never did make a proper appraisal; that they were quite cognizant that they had not made a proper appraisal and yet they had arbitrarily and capriciously filed a condemnation suit approximately one year previous to this statement which is of the court record and in which they admit that no proper appraisal has been made. The fact that they did not make a proper appraisal and knew it and yet had the audacity to make the inconsequential offer that they did, proved beyond doubt that [88] the offer was in bad faith and constituted a mere token compliance with the statutes.

/s/ PANCHO BARNES,
/s/ E. S. McKENDRY.

Subscribed and sworn to before me this 26th day of April, 1955.

[Seal] /s/ VIOLET O. RYBURN,
Notary Public in and for said County and State.
My Commission Expires May 28, 1956. [89]

Acknowledgment of Receipt of Copy Attached.

[Endorsed]: Filed April 27, 1955.

[Title of District Court and Cause No. 1253-ND.]

SUPPLEMENTAL SPECIFIC INFORMATION ON MOTION TO DISMISS AND MOTION TO SET ASIDE DECLARATION OF TAKING AS REQUESTED BY MR. McPHERSON, ASST. U. S. ATTORNEY

Come Now the defendants, Pancho Barnes, E. S. McKendry, and William Emmert Barnes, and do here provide in detail the information and specifics as requested covering paragraphs I, II, III, and VI of the Motion to Dismiss, and etc.

Public Law 564 of the 81st Congress approved June 17, 1950 was the only specific Statute purporting to apply to the subject property. The only words remotely applicable were the ambiguous phrase—"land for Base Expansion,"—The defendants did ask for specific information as to the lands required for this expansion. The Government refused the information as requested. The defendants did attempt to get this information by subpoenaing the proper authorities duces tecum. The Government made motions to quash and did arrange to have these motions to quash heard on the same date as the defendants had set for their motions. Therefore, the Government outsmarted and thwarted the defendants.

The defendants had a very difficult time digging out [91] the committee meetings referring to the land required for base expansion. The Superintendent of Documents did inform them that no copies

were to be had. Eventually the defendants procured the hearings of both the 1st and 2nd Session of the 81st Congress as related to the procurement of land at Muroc.

Here now the defendants do accord to the Government the courtesy which was denied them and do explain that of which the Government is entirely cognizant, and which information the Government did so assiduously and in a clandestine manner dishonestly conceal from the defendants.

In the 1st Session of the 81st Congress, the Air Force did ask for "139,000 acres of land" and "$4,500,000" for the purchase thereof. But they evidently did not pursue this tack. As in the 2nd Session of the 81st Congress, they ask for $3,800,000 and propose to buy 80,500 acres.

It seems that a Congressman Leroy Johnson of California did briefly visit the Muroc Air Base and wrote a report thereon dated at Washington, D. C. December 6, 1948. This report (which was put into the records of the 1st Session) reflects the opinions of Col. S. A. Gilkey, who was at that time commanding the Muroc Base and had dreams of Empire. Col. Gilkey and his opinions were well known to the defendants. Congressman Johnson states "The commanding officer, Col. S. A. Gilkey, was most cooperative and cordial. He took us around the base and we got to see practically everything in the 2 days we were there. He also gave us an excellent briefing on the program being carried out and the future plans for the base." Congressman Johnson goes into ecstacies over the marvelous

things he saw on the Base. At the time of his visit, the Air Force was in a whirl over the X-1 and piercing the Sonic Barrier, and everything concerning the operations was highly secret. Aviation had hit a milestone that would stand until someone flies faster than the [92] speed of light! However, Congressman Johnson never mentions looking at any of the "desert" in the vicinity. His information sounds strictly hearsay and the information he gave Congress was incorrect. Referring to the record it says:

Mr. Bates. What did you have to say about the acquisition of this entire townsite?

Mr. Johnson. This is not a town; it is only a station, they are building in that area.

Colonel Myers. We only have a few buildings; we have a dozen buildings altogether. It is a stop on the railroad. There is a post office and a few other buildings.—

The Chairman. Now, Mr. Johnson, will you give the committee briefly the results of your trip out there and your recommendations with reference to it?

Mr. Johnson. They are in the letter you just placed in the record, but the major recommendation was that we acquire any other land that was necessary. (Emphasis added.) The cost of that land is not very high. Of course part of it is improved. Part is in alfalfa, and they have pumps there and buildings on it. Another thing, there is a commercial business there. (Emphasis added.) That is a mountain of mud which is used in oil drilling. I

do not know what the details are, but they have a considerable operation there.

I believe the cost they have is a reasonable cost. The main purpose of acquiring all of it is that people are moving in around the base and building shacks and renting them to people on the base. (Emphasis added.)

Mr. Durham. You mean you are getting mud instead of land?

Mr. Johnson. No; we are getting some very fine land.

Mr. Bates. Are you buying land?

Mr. Johnson. Buying land and buying the operations on the land. (Emphasis added.) [93]

We the defendants here point out that Mr. Johnson spent some part of the two days on the Base. That he shows no first hand knowledge of the true situation. That he never states that he saw any of the land the Air Force wished to acquire. He specifically says that there is "a commercial business there." (Emphasis added.) When asked about the town of Muroc, Mr. Johnson says "This is not a town; it is only a station, they are building there." He says "The main purpose (emphasis added) of acquiring all of it is that people are moving in around the base and building shacks and renting them to people on the base."

We the defendants do not accuse Mr. Johnson of deliberately misinforming the Congressional Committee. His information leads us to conclude that he personally did not visit the Town of Muroc. The Town of Muroc was a small but complete

desert town. Anderson's General Store was and had been there since 1912. The store had everything and was quite as fabulous in its way as breaking of the "Sonic barrier" was in its respect. It contained groceries, meats, ice, wine, beer, newspapers, magazines, drugs, yardage, clothing hardware, tires, auto accessories, harness, and etc., etc. We desert rats had a saying "If you can't find what you want in Los Angeles, go to Anderson's." There were three gas stations in the town, two garages, an excellent restaurant that had been there before or about the beginning of World War II.

There was another large restaurant of later date, modern with excellent food. A snack bar-soda fountain; a barber shop; cleaning and laundry establishment. There was an off-sale package liquor store that sold many other items. There was a modern high class clothing store. There were a great many private rentals—not "shacks." There was the Kern County housing that we believe housed some 800 people. There was the Post Office, Santa Fe station and freight houses, V.F.W. Club House, the [94] Public Schools and many old time residents which were there before the Base was ever built and they were certainly not encroaching on the Base, but vice versa.

Mr. Johnson tells Congress that "there is a commercial business there. That is a mountain of mud which is used in oil drilling." The mud company to which he referred was not in the Town of Muroc, but was some 8 miles from the town in a northeasterly direction and situated out on the lake itself.

We now take up the 2nd Session of the 81st Congress.

Mr. Sheppard. We will take up the next item, the "Muroc Air Force Base, Calif.," where I see that you are making a request for $3,800,000.

General Myers. Muroc is, of course, the large base for our experimental aircraft, developmental aircraft. You all know that we have a large lake there, a dry lake, that lends itself to this type of work so that these airplanes can land on it. It is 15 miles long and some 6 miles wide. We need a lot of land there, and that is one item we have in here for the base expansion. Our requirement is about 139,000 acres. This will provide for approximately half of that at an average cost of about $34 per acre.

Mr. Sheppard. Does the $34 per acre include some of the mining locations that you are going to have to take over?

General Myers. It includes those mud-mining operations, and we have worked out an arrangement with them whereby we can acquire their properties and they can move over to a new location.

Mr. Sheppard. In other words, there is nothing in this proposal directly or indirectly that is going to cause the cessation of that operation?

General Myers. It will cause the stopping of the operation on the lake itself, but they will move over to another lake to the southwest. (Emphasis added.)

[95] (The only lakes to the Southwest are Rosamond Lake, Buckhorn, and other small lakes. So that General Myers' statement is confusing and

misleading in view of Air Force procedures, insomuch as the Air Force represented to Judge Beaumont on these defendants' first motions that they were taking all of these lakes in the expansion program.)

Cost of Land

Mr. Wigglesworth. How much land do you propose to buy?

General Myers. 80,500 acres at about $32.40 per acre, based on the over-all appraisals the engineers have made in the area.

Mr. Sheppard. Regarding the cost of the acreage, does that figure cover the across-the-board percentage? You recognize the fact that there will be high and low spots?

General Myers. That is right. The mud mining operations will be more expensive.

Mr. Sheppard. That is what is shoving the price up on the average. The land itself is very definitely desert. (Emphasis added.) I would say that the cost of the land is that high because of the mud mining operation?

General Myers. That is right.

Mr. Sikes. For what purpose do you propose to buy 80,500 acres?

General Myers. We have to acquire the land on this lake, or part of the land on the lake. We have to put a runway in their eventually, and we have to relocate the railroad that runs right across the lake. We have to acquire the land for that, and then we are acquiring land in the vicinity to prevent encroachment on the base area.

Mr. Wigglesworth. What will the total acreage be?

General Myers. 139,000 acres plus the acres we have now. [96]

General Spivey. It is 161,375 acres at present.

Mr. Wigglesworth. You are going to increase it by 50 per cent?

General Myers. I have a map here that shows the existing reservation, 156,560 acres. Proposed acquisition, 139,000 acres.

Mr. Wigglesworth. I thought you said 85,000.

General Myers. The total additional land we require is 139,000 acres. In this estimate we are able to procure 80,000 of that.

General Spivey. This is just a portion of that.

Mr. Joe McPherson, Attorney for the Government and the head of the Lands Division in Los Angeles, has said that if the defendants did not be completely specific and detailed that he would have the Court continue the motions until all cards were laid on the table. The defendants did show Mr. McPherson the photostats of the Government records and explain fully to him.

The above Congressional Committee meetings very thoroughly did go into what land was going to be acquired; for what purpose; and where said land was located. This resulted in Public Law 564 approved June 17, 1950. The subject property is located some eight miles southwest of the Town of Muroc and not in the vicinity of the land as described. Congressman Johnson said the "recommendation was that we acquire any other land that

was necessary." The Government has never shown any necessity for the subject property. Had the subject property been intended to be included in the land discussed by Congress, there would have to be mention and description of said property because it was a nationally known guest ranch hotel. Restaurant, bars, dance hall, rodeo grounds where nationally known Championship Rodeos were held. Horse ranch, hog ranch, cattle and [97] hay ranch. It involved several commercial businesses. The airport was internationally known and marked on all the World Charts. The airport was Government Approved and at the time of the Congressional Hearings had a G.I. Bill of Rights Flight school in operation, and also was Government and State licensed.

The subject property was larger and worth more than the whole town of Muroc. It was worth more than the Mud Mines. It was obviously not shown to Congressman Johnson. It was not mentioned to Congress. Even its location was not mentioned to Congress. The very description of the subject property as titled in the case was "360 acres of land in the County of Kern, State of Calif." was inaccurate and misleading as the condemnation was not for the land alone but everything on it, and the description beggars the property. Further proof of the fact that the subject property was not included in the Public Law 564 is definite because of the information given Congress and their understanding of said information is clear. For instance: Mr. Sheppard says—"The land itself is very defi-

nitely desert. I would say the cost of the land is that high because of the mud mining operation?

General Myers. That is right."

Regarding paragraph VI of the motion to dismiss, the defendants were harrassed by the Corps of Engineers; the Commanding Officer of the Air Base, General J. S. Holtoner, made a public statement that the defendants' property should be bombed; that the legal officer, Lt. Col. Marcus B. Sacks, stated that the defendants should be bombed. That Pancho Barnes attempted to have a legal paper served on General Holtoner by Constable Hodges and General Holtoner refused to allow himself to be served, whereupon service was made by one Clifford Morris, a civilian employed on the Base. Whereupon [98] Clifford Morris was disciplined, punished, and serious recriminations made against him. Clifford Morris was further frightened and intimidated by Lt. Col. Marcus B. Sacks. That General Holtoner assumed duties as Base Commander in relation to the condemnation of the defendants' land and greatly aggravated the defendants and that after his assumption of such duties, the defendants' income was materially depleted.

The defendants contend that their property was not taken legally under Public Law 564 of the 81st Congress.

If the Secretary of Air did authorize the condemnation suit and if the Assistant Secretary of Air Edwin V. Huggins did sign a declaration of taking for the subject property, it was done arbitrarily, capriciously, without adequate determining

principle and in bad faith, or was unreasoned and was in bad faith.

On February 26, 1953, General J. S. Holtoner did in violent rage threaten to get rid of the defendants. Did mention a condemnation suit and did threaten to bomb the defendants with napalm bombs.

On February 27, 1953, a complaint in condemnation was made up in the Lands Division of the U. S. Attorney's office at Los Angeles and signed and filed on that same day.

Also a certain paper purported to be a Declaration of Taking for the subject property was also filed on February 27, 1953.

The "Declaration of Taking" as filed is an obviously and completely made over document, obviously changed after it was signed by Edwin V. Huggins. It is a paper that originally appears to have been intended for another case. The case number was 1201-ND, which number was scratched out. The defendants' case No. 1253-ND written in probably at the time of filing. The acreage was 1,710.73 acres, which was x-ed out and changed to [99] 360 acres. The name of the defendants Ethel Petrovna Rice, et al., was x-ed out and E. S. McKendry, et al., added. The caption: "Declaration of Taking No. II" had the "No. II" x-ed out. On the second page, beginning at line 16—"and is a description of part of the lands in the amended complaint in condemnation filed in the above-entitled cause." The word "amended" is x-ed out; the phrase "part of the lands" does not fit, as all of the defendants' land was described in Schedule "A" attached.

The defendants have examined several dozen condemnation files and found no other slipshod or made-over documents. The defendants have shown their photostatic copy of their so-called "Declaration of Taking" to several attorneys and many other informed persons and all these people have unanimously agreed that the document is illegal, it has been described as "manufactured," "forged," and "fraudulent" by these authorities. If we can have our rights taken from us on such a document and if such document can be called "legal" or in any way condoned, then no one has any protection by or from any legal paper. Judge Beaumont even initialed a change on the carbon copy in his order and Opinion on defendants' case. How about changed documents in Wills—Contracts—Oil leases, etc.?

Dated: May 12, 1955.

Respectfully submitted,

/s/ PANCHO BARNES,
/s/ E. S. McKENDRY,
Defendants in Propria Persona.

Acknowledgment of Receipt of Copy Attached.

[Endorsed]: Filed May 12, 1955.

[Title of District Court and Cause No. 1253-ND.]

SUPPLEMENT TO MOTION TO DISMISS INCLUDING MORE DEFINITE STATEMENT

Come Now the defendants, Pancho Barnes, E. S. McKendry, and William Emmert Barnes, and move this Honorable Court that the Complaint on file herein be dismissed for the following reasons:

I. That the Secretary of the Air Force and the Assistant Secretary of the Air Force acted arbitrarily and capriciously and without adequate determining principle, was unreasoned, and acted in bad faith when they instituted the condemnation suit.

(a) This allegation is based on the Public Records and specifically on the Committee meeting of the 81st Congress, Public Law 564, regarding Land for Base Expansion at Muroc.

(b) It is also based upon the maps and files of the District Engineer at Los Angeles as seen by the defendants.

II. That fraudulent misrepresentations were made to Congress regarding the properties to be condemned. [102]

This allegation is based on the incorrect information given the above referred to Congressional Committees by the Air Force lobbyists and by Congressman Johnson, who was obviously misled and influ-

enced by the local commanding officer. The defendants and their witnesses are experts on the town of Muroc, its vicinity, environs, and the area for miles around. The actual Congresssional Hearing is quoted in detail in the document filed May 12, 1955 entitled "Supplemental Specific Information, etc."

III. That Public Law 564, approved June 17, 1950, did not include the subject property, nor did any other Public Law as mentioned in the Complaint include said property.

Public Law 564 was the only authorization law purportedly pertaining to the subject property. Discussion was specific in the Congressional Hearings, the text is set forth in the "Supplemental Specific Information, etc.," filed May 12, 1955. It is clear that the subject property was not authorized by Congress, nor was the subject property asked for or even suggested by the Air Force lobbyists.

IV. That said property was not necessary to the expansion of the Edwards Air Force Base and no public use was intended or planned for the subject property.

This is a plain statement of fact. Maps of the Area will so prove its truth. Be it noted that a very heavily trafficed highway owned and maintained by Kern County is between the subject property and the fenced Air Base and is over two miles nearer the base than the subject property.

V. That this Court lacks jurisdiction of the con-

demnation suit because the property was obviously not included in the Statutes under which the Condemnation Suit was instituted.

In a pleading of bad faith, the Court has jurisdiction to determine the necessity of the taking of the property. In a [103] pleading of bad faith and lack of jurisdiction the Court has jurisdiction to determine whether or not the Court has jurisdiction. The Court is obligated to dismiss a Condemnation Suit which is improperly instituted and which is taken in violation of the Statutes purported to but which in actuality do not pertain to the subject property.

VI. That agents of the Air Force directed by higher headquarters and/or the Secretary of the Air Force, did so harrass the defendants, and did harm their business in attempts to discourage and sicken them to the point that they would be willing to leave and sell out without the benefit of the due process of law.

Colonel Leroy Cooper, the Judge Advocate of the Air Research and Development Command, did tell the defendants that General J. S. Holtoner had been sent to Muroc with specific orders to "get rid of" the defendants. Also, the actual findings in the case, where the defendant Pancho Barnes did sue General Holtoner and Lt. Colonel Sacks, Case No. 15403-C, indicate the truth of the above allegation. Not to be confused with the original "proposed" findings not signed by Judge Carter, but read to the Honorable Judge Jertberg on May 23, 1955 by At-

torney Joe McPherson, with the malicious intent of deceiving the Honorable Court.

VII. The Secretary of the Air Force has attempted to attain his ends without granting the defendants their rights under the Constitution and particularly the Fifth Amendment.

The Secretary of the Air Force and/or the Assistant Secretary of the Air Force have perpetrated the illegal taking of defendants' property. Have permitted the harrassment of the defendants without the benefit of statutory rights, without a legal estimate of just compensation, with a bogus ex-parte [104] judgment made before the defendants were even aware that a Condemnation suit, etc., was filed.

VIII. That the Secretary or the Assistant Secretary of the Air Force did take the subject property with intention for private use. The intent of taking for private use was two-fold. That while the Government did not have any military use intended or planned for the subject property, there was an obvious plan for the subject property for private use. This plan was two-fold: (a) The defendants were informed by General J. S. Holtoner that the personnel of the Air Base would use the subject property as it stood for private use and defendants believe that this intention would have been put into effect had not the defendants rigorously contested that the Air Base could not do this. Besides the "rigorous contention" the defendants did, with absolute legality, pull the two big water pumps sup-

plying water to the property, which did render the property waterless and therefore untenable. (b) That while no military use of the subject property was intended, the Air Force did intend to and did confiscate illegally all property not only in the vicinity of the Town of Muroc but for many miles to the North, South and West thereof. This was done so that no private business could remain within many miles, and so that the Air Force masquerading under the "Wherry Housing Act" could and has established a "Monopoly Town." This town is located on confiscated land, land that was condemned or was purchased under the threat of condemnation. This town, besides the Wherry Housing, is a complete "Monopoly Town." The roads, schools and library, etc., are supported by Kern County taxpayers. The renters of dwellings are forced to pay the Kern County property taxes on the buildings. The private individuals who have concessions, dealt out by favoritism, pay a 10% of their gross take with a minimum guarantee to the Hal B. [105] Hayes Corporation. The town is controlled, is a monopoly, is Un-American in its concept, and in violation of the Anti-trust laws. Had the Air Force not put all the local business people out of business, including the defendants, no such Communistic-like atrocity such as the community of Edwards could exist in America. The subject property was put out of business to help promote this "Monopoly Town." The defendants were never asked to consider taking a "concession" such as would replace their business and the same is true of

the other old businesses in the area. The Air Force made much ado that liquor stores could not be allowed on Government property, but the "Monopoly Town" of Edwards is complete, liquor and all.

IX. The Government has dogmatically refused to show the defendants any justification for the taking of their property. The defendants were briefly shown certain of the Engineers' files. The only justification therein was as of the 82nd Congress. There was nothing to show that the subject property was included. In fact, to the contrary. Be it remembered the subject property was taken under Public Law 564 of the 81st Congress. It is acknowledged legally that when documents are concealed or withheld that the Court may take cognizance that the documents would be adverse to the side withholding them. If this condemnation suit, etc., were strictly legal, would not the Government be happy to show their authorities? Yet, on the other hand, the Government has demanded minute and specific detail from the defendants, while at the same time the Government refuses to show their files, maps, etc. Is this a legal equity?

X. The Air Force did change over, and almost completely rebuilt, virtually the entire Air Base in a drastic and expensive manner. The defendants can find no authority or justification in Congress for this cataclysmic manipulation. The most definite authority, if any, would come under Public Law 564, [106] which law gave definite authority for runway, barracks, land, etc., with a total sum

of approximately $26,000,000. The Air Force Base spent many more millions and the defendants are informed and believe that this wrongful expenditure greatly exceeded the amount authorized by Congress. That the Air Force has thus abused and exceeded the authority delegated to it by Congress. The manipulation of monies spent without proper frankness to Congress and proper appropriation has thrown a burden on all land owners in the appraisals and offers for land condemned, whether or not proper and legal justification were made.

XI. Should the Government made any claim for security, or that the Air Base is a "sensitive installation," let us state that the new highway leading from the northerly direction to the "Monopoly Town" of Edwards is so strategically situated for the benefit of any one who cares to drive over it that it overlooks, from a hill, the heart of the Air Base, when the goings-on may be observed with the naked eye or, should more detail be of interest, then field glasses would be of easy use.

XII. While the 300,000 acres that the Air Base now claims as their territory is of much acreage and many farms, etc. have been sacrificed, this acreage is of little consequence to a fast airplane. It is traversed in a question of seconds. As the "Monopoly Town" of Edwards "a fast growing community" is located closer to the Base proper, runways, etc. than the subject property. There is no attempt to confine dangerous experimental tests to their own territory. Heavens No! Why should

they jeopardize the Air Base when they have so many other Desert Communities and privately owned land to fly over. Their accident record, past, present and future, has and will prove that the taking of many thousands of acres and the destruction of hundreds of private uses of land has been, alas, [107] in vain.

This Supplemental Motion is based upon the Original Motion filed April 22, 1955 and upon the pleadings on file in the within action, and upon the Memorandum of Points and Authorities, and on such documents, affidavits, witnesses and arguments as may be offered in support of the Motion.

/s/ PANCHO BARNES,
Defendant in Propria Persona. [108]

[Endorsed]: Filed June 1, 1955.

[Title of District Court and Cause No. 1253-ND.]

SUPPLEMENT IN ADDITION TO MOTION TO SET ASIDE DECLARATION OF TAKING AND TO VACATE AND SET ASIDE EX PARTE JUDGMENT ENTERED THEREON

Come Now the defendants, Pancho Barnes, E. S. McKendry, and William Emmert Barnes, and move this Honorable Court to set aside the Declaration of Taking dated February 27, 1953, and to vacate and set aside the ex parte judgment entered thereon dated March 2, 1953 for the following reasons:

Now here include the original Motion as filed April 22, 1955 and consider Paragraphs I, II, III, and IV, and add as follows:

V. That the document entitled "Declaration of Taking," Case No. 1253-ND, United States of America, Plaintiff vs. 360 Acres of Land, in the County of Kern, State of California; E. S. McKendry, et al., with the word "Amended" Xed out and showing "part of the lands" in Schedule A, which document did not and does not apply to the defendants' subject property, be set aside for the following [109] additional reasons: That said document is a disgrace to the integrity of the Government. That it is a frightful thing that U. S. Citizens can be put out of business and their land taken from them, their birthright under our Government of life, liberty and pursuit of happiness, hindered, hampered and endangered by such a slipshod, haphazard, casual and messy document, which would not be considered a legal document in any deal from real estate to the purchasing of hogs. That the document on its face proves:

(a) That it is a changed document.

(b) That there is no indication as to when it was changed or who changed it.

(c) That on its face it plainly indicates that it is, fraudulent, manufactured or forged.

(d) That if the changes were made after the Assistant Secretary of the Air Force Huggins signed, he in effect did not sign it at all for the subject property and did not know of what the subject property consisted.

(e) That if the changes were made before the Assistant Secretary Huggins signed the document, that there is nothing to indicate that he approved the changes. That if he paid so little attention to the document then, he did not know what he was signing. If the changes were made before Huggins signed the document and he did not note and correct and/or initial same, he was negligent, incompetent, and unfit in his position. Such an entirely negligible document could not be considered a legal document. The defendants feel strongly that neither negligence nor fraud should be condoned on behalf of the Government. [110]

VI. That the estimate of just compensation was made knowingly in bad faith because the Government did not have sufficient funds to make a proper offer. The subject property was not asked for by the Air Force lobbyists and not fitting or sufficient appropriation was made, because the Air Force had no justification.

That the Secretary of the Air Force and/or the Assistant Secretary of the Air Force and/or "lower authority," for which "higher authority" is responsible, arbitrarily, capriciously, and in bad faith did make a so-called "Declaration of Taking" and did deposit a mere nominal sum constituting a noncompliance with the statute because there was no money appropriated for said property. The intention was plainly to put the burden of the value of the property on the defendants. Forcing them to be harrassed with court action and in turn throwing the responsibility upon the United States Treasury

to make up the cost of the property for which they had no appropriation.

The Air Force lobbyist General Colby M. Myers, in a memorandum to the Assistant Secretary of the Air Force dated December 27, 1950, did state "Approximately $1,563,100. now available to cover first, second, and third priorities and possibly part or all of priority four." E. V. Huggins, Assistant Secretary of the Air Force, writes a letter to the Chief of Engineers and requests "certain priorities be established for the acquisition of this land (a) Land for the relocation of the railroad, (b) The Mud Mines."

An estimated cost: "New railroad right of way $35,000." "Relocation cost for the railway and powerline $5,695,000." "Acquisition of mineral interests and relocation of mud mines $2,000,000." Note: Above figures gleaned from the files of the District Engineer.

This Supplemental Motion will be based upon the Motion that it supplements, filed April 22, 1955, and upon the [111] so-called "Declaration of Taking" on file and the "Decree on the Declaration of Taking," on testimony at the time of hearing; affidavits making a prima facie showing of non-compliance with the statute; exhibits proving bad faith in the manner of appraisal of the lands and building; and other and sundry documents in support of the motion.

/s/ PANCHO BARNES,
Defendant in Propria Persona. [112]

[Endorsed]: Filed June 1, 1955.

[Title of District Court and Cause No. 1253-ND.]

MINUTES OF THE COURT

Date: June 6, 1955. At: Los Angeles, Calif.

Present: Hon. Gilbert H. Jertberg, District Judge.

Deputy Clerk: Louis Cunliffe. Reporter: Virginia Wright. Counsel for Gov't.: Laughlin E. Waters, U. S. Att'y., and Jos. F. McPherson and Richard A. Lavine, Ass't. U. S. Att'ys.

Counsel for Defendant: No appearance. Defendant Pancho Barnes present, in pro. per.

Proceedings: For hearing on plaintiff's motion to quash subpoena duces tecum.

Continued to 2 P.M. At 2 P.M. court reconvenes herein, and all being present as before, including def't. Pancho Barnes, in pro. per., and counsel for Gov't.;

Attorney McPherson makes a statement.

Def't. Pancho Barnes makes a statement.

At 3:30 P.M. court recesses. At 3:40 P.M. court reconvenes herein, and all being present as before,

Pancho Barnes resumes argument in pro. per.

Attorney McPherson argues.

Court Orders Gov't. motion to quash subpoena duces tecum Granted, and that Def't. Barnes be specific in designating documents in future subpoenas; Attorney McPherson to prepare formal order.

Court adjourns at 4 P.M.

JOHN A. CHILDRESS,
Clerk. [113]

[Title of District Court and Cause No. 1253-ND.]

OPPOSITION TO MOTION TO DISMISS AND MOTION TO SET ASIDE DECLARATION OF TAKING AND JUDGMENT THEREON

Comes now the United States of America, plaintiff herein, by Laughlin E. Waters, United States Attorney, and Joseph F. McPherson and Richard A. Lavine, Assistant United States Attorneys, for the Southern District of California, pursuant to authorization of the Attorney General of the United States, and denies all and singular, each and every, the material allegations of the motion to dismiss this proceeding and the motion to set aside the declaration of taking and judgment thereon, as supplemented and amended, and shows and represents unto this Honorable Court as follows:

I.

Edwards Air Force Base (formerly Muroc Air Force Base) is presently a special installation under the Air Materiel Command and, among other things, is the flight test station for all new aircraft being produced for the United States Air Force. [114]

II.

The mission of the Air Force Flight Test Center at Edwards Air Force Base is, among other things, to accomplish functional flight tests of complete manned aircraft weapon systems, including components and allied equipment; to conduct engineering

evaluation flight tests of aircraft and power plants; to accomplish static firing tests of guided missile power plants; to accomplish research and development related to such tests; to plan for, control and operate the experimental rocket engine test station, the USAF experimental flight test pilot school, Air Force flight test center track testing facilities, and other special test facilities, and to provide facilities and necessary services for contractors and other governmental agencies in support of the prescribed mission of the Air Research and Development Command.

III.

Edwards Air Force Base was established many years ago. Several enlargements of the area of the Base and changes in the mission and functions thereof have been authorized and undertaken. At present the base encompasses an area of approximately 300,000 acres being developed in accordance with a master plan approved in 1950.

IV.

So far as is material to this proceeding, the enlargement of Edwards Air Force Base, involving among others this condemnation, results from the determination of necessity made by the Secretary of the Air Force under and pursuant to, among others, the Act of June 17, 1950, Public Law 564, 81st Cong. (64 Stat. 236 at 242); the Act of July 26, 1947, codified in part at 10 U.S.C. 1343(a), (b) and (c), 5 U.S.C. 171, and 50 U.S.C. 401 et seq.; the Acts of July 2, 1917 (40 Stat. 241) and April 11,

1918 (40 Stat. 518), 50 U.S.C. 171; and the Act of August 1, 1888. [115]

V.

Specific authorization to acquire the lands necessary to effectuate the determination of the Secretary of the Air Force, aforesaid, and the appropriation of funds required for that purpose is found in the Act of June 17, 1950, Public Law 564, 81st Cong. (64 Stat. 236 at 244); the Act of September 6, 1950, Public Law 759, 81st Cong. (64 Stat. 595 at 748), the Act of January 6, 1951, Public Law 911, 81st Cong. (64 Stat. 1223 at 1233); and the Act of January 6, 1951, Public Law 910, 81st Cong. (64 Stat. 1221 at 1223).

At the time Public Law 564, 81st Congress, supra, was enacted, the area of the Base was approximately 160,000 acres. The additional area necessary to be acquired, in the opinion of the Secretary of the Air Force as submitted to the 81st Congress, was 139,000 acres which, together with the lands previously owned, including public domain, aggregate the 300,000 acres presently within the boundaries of the station, all of which has been authorized, approved, and appropriated for by the Congress of the United States in the usual and customary manner.

VI.

At the time the declaration of taking assembly was submitted to and approved by the Secretary of the Air Force he had before him an appraisal of the subject property prepared by an experienced, qualified contract appraiser who had determined the

fair market value to be $205,000. The Secretary of the Air Force did not have any other or contrary appraisals, and his estimate of the just compensation required by 40 U.S.C., section 258a, which he determined upon and caused to be deposited in the registry of the court is the sum of $205,000, the full amount of the contract appraisal. [116]

VII.

Reserving the right heretofore asserted in this case respectfully to dispute the power and authority of this court to consider or pass upon the issue of necessity raised by the defendants' motions in connection with the allegation that no public use was contemplated or intended, the plaintiff alleges that the sole and only purpose in acquiring the defendants' property was for the enlargement and development of Edwards Air Force Base, a military installation, as hereinbefore described, and for no other purpose, and that the use which has been and will be made of the property condemned is purely and solely military in nature, and is in no sense private.

VIII.

The plaintiff, its officers and agents, particularly those named in the defendants' motions and affidavits and in testimony heretofore taken, have not been guilty of any harassment of the defendants. The truth of this allegation having been several times established by judgments and orders of this court, judicial notice will be taken of them and they are the law of this case.

IX.

The condemnation of Tracts L-2040, L-2043, L-2071, and L-2072, comprising approximately 360 acres of land purportedly owned by the defendants herein, by a separate independent action rather than by way of amendment of the action then and now pending undetermined in this court entitled "United States v. 1,710.73 acres of land in the County of Kern, State of California; Ethel Petrovna Rice, et al.," numbered 1201-ND, was undertaken pursuant to the express authorization and direction of the Acting Assistant Attorney General of the United States in charge of the Lands Division, Department of Justice, effectuating the request for acquisition of said parcels by condemnation, executed at the [117] direction of the Secretary of the Air Force by the Honorable E. V. Huggins, Assistant Secretary of the Air Force, dated February 3, 1953. This action has been ratified, approved and confirmed.

X.

The plaintiff does not consider any other allegations or purported allegations of the motions, as supplemented and amended, to tender issuable facts and no note is taken of them. If any or either thereof should be determined to be material, the plaintiff prays leave of court for a reasonable opportunity to traverse them and to offer proof as to the truth in relation to such allegations.

UNITED STATES OF AMERICA,
LAUGHLIN E. WATERS,
United States Attorney,

JOSEPH F. McPHERSON,
Assistant U. S. Attorney,
RICHARD A. LAVINE,
Assistant U. S. Attorney,
/s/ By JOSEPH F. McPHERSON,
Attorneys for Plaintiff. [118]

Affidavit of Service by Mail Attached. [119]

[Endorsed]: Filed June 13, 1955.

[Title of District Court and Cause No. 1253-ND.]

AFFIDAVIT OF RICHARD A. LAVINE RE FILES OF UNITED STATES ATTORNEY'S OFFICE

State of California,
County of Los Angeles—ss.

Richard A. Lavine, being first duly sworn, deposes and says as follows:

I am an Assistant United States Attorney, and am assigned to the Lands Division of the United States Attorney's Office for the Southern District of California. I am one of the attorneys responsible, at the present time, for the handling of the above entitled case.

I have examined the official office files of the United States Attorney's Office pertaining to the above entitled case, and found therein the documents as set out below. True photostats of such documents are attached hereto and incorporated herein as though at length set forth. [120]

1. Letter of 8 December 1952, from District Engineer to Walter S. Binns, United States Attorney, together with two copies of the enclosures, namely, letter of 4 December 1952 from W. R. Shuler, District Engineer, to Division Engineer, South Pacific Division; and Report of Negotiations, dated 4 December 1952 from J. L. Maritzen.

2. Certified copy of letter of February 3, 1953, from E. V. Huggins, Assistant Secretary of the Air Force, to the Attorney General.

3. Letter of February 5, 1953, from James M. McInerney, Assistant Attorney General, to Walter S. Binns, United States Attorney.

4. Carbon copy of letter of February 20, 1953, from Walter S. Binns, United States Attorney, to Lands Division, Department of Justice.

5. Letter of 20 February 1953 from J. L. Maritzen, Chief, Acquisition Branch, Real Estate Division, Office of District Engineer, to Walter S. Binns.

6. Carbon copy of letter of February 24, 1953, from Walter S. Binns, to District Engineer.

7. Telegram of February 25, 1953, from J. Edward Williams, Acting Assistant Attorney General, to Walter S. Binns.

8. Carbon copy of letter of February 27, 1953, from Walter S. Binns to Lands Division, Department of Justice.

9. Carbon copy of letter of March 3, 1953, from

Walter S. Binns to Lands Division, Department of Justice.

10. Carbon copy of letter of March 4, 1953, from Walter S. Binns to District Engineer.

11. Carbon copy of letter of March 18, 1953, from Walter S. Binns to District Engineer.

12. Carbon information copy of a letter of 24 March 1953 from Harold E. Spickard, Chief, Real Estate Division, Office of [121] District Engineer, to Division Engineer, South Pacific Division.

13. Letter of April 22, 1953, from J. Edward Williams, Acting Assistant Attorney General, to Walter S. Binns.

14. Telegram of September 14, 1953, from Perry W. Morton, Assistant Attorney General, to Laughlin E. Waters, United States Attorney.

In addition, I have procured for our files a copy of a letter dated March 17, 1953, from the Attorney General to the Secretary of the Air Force, copy of which had been forwarded to the Division Engineer, South Pacific Division. A copy of said letter is attached hereto and incorporated herein as though at length set forth.

/s/ RICHARD A. LAVINE.

Subscribed and sworn to before me this 6th day of June, 1955.

[Seal] JOHN A. CHILDRESS,
Clerk, United States District Court, Southern District of California,
/s/ By L. B. FIGG,
Deputy. [122]

EXHIBIT No. 1

Corps of Engineers, U. S. Army
Office of the District Engineer
Los Angeles District
751 South Figueroa Street
Los Angeles 17, California

8 December 1952

Refer to File No. SPLRA 601.1 (Edwards AFB —Tracts L-2040, L-2043, L-2071 and L-2072) (Pancho Barnes tracts.)*

Mr. Walter S. Binns
United States Attorney
Department of Justice
807 Federal Building
Los Angeles 12, California

Re: U. S. vs. 1,710.73 Acres of Land, in the County of Kern, State of California; etc. — Civil 1253
1201-ND.

Herewith for your advance information is copy of Declaration of Taking Assembly submitted by this office.—(On Pldg's Board.)*

For the District Engineer:
Very truly yours,

/s/ J. L. MARITZEN,
Chief, Acquisition Branch,
Real Estate Division.

1 Incl
cy D/T Assy.

(~~It will be necessary to Amend Comp~~. See Report of negotiations to date att. hereto.)* [123]

* Pencil writing.

[Stamped]: Received Dec. 9, 1952.

Exhibit No. 1—Continued)

Splra 601.1 (Edwards Air Force Base, California. Tracts L-2040, L-2043, L-2071 and L-2072).

(4 December 1952) Handwritten Initialed RAL

Declaration of Taking No. 2 Covering Tracts L-2040, L-2043, L-2071 and L-2072, Edwards Air Force Base, California.

Division Engineer
South Pacific Division
Corps of Engineers, U. S. Army
P. O. Box 3339, Rincon Annex
San Francisco 19, California

1. Reference is made to Teletype SPDRC 719 from your office, dated 1 December, 1952, authorizing submission of Declaration of Taking assembly on subject tracts, which are owned of record by E. S. McKendry, et al., but which are purportedly owned by Mrs. Pancho (Barnes) McKendry, and also to the voluminous previous correspondence relative to the acquisition of these four tracts, which are known in the project as the Rancho Ore Verde.

2. Inclosed is Declaration of Taking assembly covering these tracts, in which the declaration is identified as Declaration of Taking No. 2 in Condemnation Case No. 1201-ND Civil. The land described in the Declaration of Taking is not presently embraced by said condemnation action and will require amendment to include Tracts Nos. L-2040, L-2043, L-2071 and L-2072 therein.

3. The owners, through their ostensible representative, Pancho Barnes McKendry, have refused to

Exhibit No. 1—Continued)

accept the appraised valuation of these four tracts in the aggregate amount of $205,000.00, and she firmly expressed such refusal on numerous occasions to myself and to the member of my staff whom I delegated to negotiate the acquisition of these tracts. Correspondence in our files reveals that Mrs. McKendry values these four tracts at between $1,500,000.00 and $3,000,000.00. No options have been obtained and a detailed report of negotiations as to the four tracts is included in the Report of Negotiations inclosed herewith, which also includes the information required by (Illegible), Orders and Regulations. Appraisals by Bernard C. Evans, Fee Appraiser, have heretofore been approved by your office and Office, Chief of Engineers, in the following amounts as to each of subject tracts:

Tract L-2040—$ 33,500.00
Tract L-2043—$ 29,000.00
Tract L-2071—$ 2,000.00
Tract L-2072—$140,500.00

Copies of these appraisals and also the title certificates are available in this office for delivery to the Department of Justice as soon as requested by its local office.

4. The Real Estate Planning Report dated 1 May 1950 recommending a Lease with Option Plan, was transmitted by Office, Chief of Engineers to Headquarters, Air Forces on 26 May 1950. However, the records of this office do not show the date of approval by Office, Chief of Engineers of the

Exhibit No. 1—Continued)

Planning Report other than as such approval is indicated by letter from Office, Chief of Engineers, dated 19 January 1951 transmitting Real Estate Directive (Illegible) to your office. Subject tracts are within the taking line approved for this project, and the estate to be acquired in said tracts, i. e., fee simple title, is in conformance with the estate authorized by Directive (Illegible) dated 10 January 1951.

5. Possession of all four tracts may be required immediately by Edwards Air Force Base, and it is therefore recommended that the Attorney General be requested to instruct his local representative to seek from the court an Order for Immediate Possession of all four tracts upon request to the local representative of the Department of Justice by this office.

6. Your attention is invited to the format of the Declaration of Taking, which, being on ruled and numbered paper, double spaced, with the caption commencing on line 8, conforms to the rules of the United States District Court as to its requirements for documents and other papers to be filed with the Court Clerk of the Southern District of California. It is recommended that in the event it is found necessary to rewrite any part of the inclosed declaration that the format of the inclosed document be preserved.

7. Funds are available in this office Under Allotment No. (Illegible), for the deposit in Court of the

Exhibit No. 1—Continued)

estimated compensation in the amount of $205,-000.00.

8. It is urgently recommended that the processing of the inclosed Declaration of Taking not be unduly delayed for the reason that many owners whose properties have already been taken by Declaration of Taking heretofore filed in Condemnation Cases Nos. 1201, 1200, 1163, and 1147, have registered complaints with the Department of Justice and this office that favoritism is being shown by the Government by delay in acquiring subject tracts, although these tracts are closer to the existing Edwards Air Force Base Project.

W. R. Shuler
Colonel, Corps of Engineers
District Engineer

2 Incls
1. D/t Assembly (12 copies)
2. Report of Negotiations (12 copies) [126]

Report of Negotiations
For Tracts Nos. L-2040, L-2043, L-2071 and L-2072
Edwards Air Force Base, California

1. Under instructions from Colonel Shuler, the undersigned made an appointment to discuss with Mr. and Mrs. E. S. McKendry (Pancho Barnes), the subject of acquiring their property. Appointment was made for 5:30 p.m., 21 August 1952, at their residence in Muroc, California. The meeting lasted for a period of approximately 8 hours, due to

Exhibit No. 1—Continued)

interruptions, but at no time during this meeting was the writer left without the presence of either Mr. McKendry or Miss Pancho Barnes, and every courtesy was extended to the undersigned during the discussion and review of procedures followed in the acquisition of property by the Government.

2. Based upon the approved appraisal, an offer was made in the amount of $205,000.00, and this offer was, as expected, rejected, as she feels that the value of her property far exceeds the offer made.

3. During our meeting, it was apparent that Miss Pancho Barnes was very well versed and enlightened on matters pertaining to the Edwards Air Force Base, its operations, and as well, several other Air Force projects in this area, including Palmdale Air Force Base.

4. Miss Barnes was very emphatic in making the statement that her property was not needed for the project, and especially not at this time, nor in the immediate future.

5. If the rejection of our offer results in a condemnation action being filed, and an application made for possession, the undersigned feels that Pancho Barnes will contest such action on the following grounds:

a. That the value as established by the appraisal does not represent a fair market value.

b. That the property is not needed for the project.

Exhibit No. 1—Continued)

c. That there is no necessity for an Order for Possession being granted for the reason that her property is not needed at this time, nor in the immediate future.

d. That her business produces an annual income of better than $100,000.00 from the many operations which she has on her rancho.

e. That there is no reason why she cannot continue operations, especially in view of the fact that the Air Forces has tentatively agreed to allow the Mojave Corporation to continue operating their mud mines for another year.

6. Miss Barnes also contends that in appraising her property, the furniture in the motel, or rooms, and equipment in the cafe, cocktail lounge, and dance hall, should be included in the appraisal, as she sees no reason for her being compelled to be in the second-hand furniture business.

7. Miss Barnes having alleged a value of between $1,500,000.00 and $3,000,000.00 for these four tracts in previous correspondence with this office, and having refused to accept the appraised valuation of $205,000.00, results in the conclusion that acquisition of these four parcels must be by condemnation, leaving the amount of just compensation to be determined at a trial of the matter in the United States District Court.

Dated: 4 December 1952.

/s/ J. L. MARITZEN,
Chief, Acquisition Branch,
Real Estate Division. [127]

EXHIBIT No. 2

Feb. 3, 1953

Dear Mr. Attorney General:

Reference is made to the pending condemnation proceeding entitled United States vs. 1710.73 acres of land, more or less, situate in Kern County, State of California, and Ethel Petrovna Rice, et al., Civil No. 1201-ND, instituted to acquire land for use in connection with the Edwards Air Force Base Project, California.

Pursuant to the provisions of the Act of Congress approved February 26, 1931 (46 Stat. 1421; 40 U.S.C. Section 258a), and the Acts of Congress recited in the complaint filed in the above entitled proceeding, it is requested that you cause the enclosed Declaration of Taking No. 2 to be filed in said proceeding for the condemnation of the fee simple title to 360 acres of land, more or less, as described in the declaration of taking. The estate to be acquired in the land, the description thereof, and the names and addresses of the purported owners are set forth in said declaration of taking. The sum estimated to be just compensation for the taking of the interests in the land is $205,000, a check for which amount will be made available to your field representative by the District Engineer, Los Angeles District, Corps of Engineers, Los Angeles, California, for deposit into the registry of the court with the filing of the declaration of taking.

The Act of Congress approved September 6, 1950 (Public Law 759 — 81st Congress), appropriated

Exhibit No. 2—(Continued)

funds to acquire the interests under consideration.

The lands described in the enclosed declaration of taking are not included in the pending condemnation proceeding. It is, therefore, requested that prior to the filing of the enclosed declaration of taking you take the necessary action to amend the complaint and other pleadings on file in the proceeding so as to include the 360 acres of land referred to above and set forth in the enclosure hereto.

The aforementioned land is required for military purposes and possession of the land is required for construction purposes. Therefore, it is requested that an order be procured from the court upon the request of the District Engineer to your field representative granting possession of the land immediately to the United States of America. [128]

Title evidence and appraisal reports will be furnished your field representative by the District Engineer.

It is requested that copies of the complaint and order of possession as amended be furnished to the Assistant Chief of Engineers for Real Estate and the District Engineer.

Three additional copies of the declaration of taking are enclosed.

By direction of the Secretary of the Air Force:

/s/ E. V. HUGGINS,
Assistant Secretary of the Air Force.

Exhibit No. 2—(Continued)

I certify this to be a true copy of the original record in my custody.

/s/ JAMES M. McINERNEY,
Assistant Attorney General, Lands Division, Dept. of Justice.

Enclosure
The Honorable
The Attorney General [129]

EXHIBIT No. 3
United States
Department of Justice
Washington 25, D. C.

RJL-CMacM
33-5-1668-284

February 5, 1953

Air Mail

Walter S. Binns, Esquire
United States Attorney
807 Federal Building
Los Angeles 12, California

Dear Mr. Binns:

Re: Lands Division Matters

Enclosed is a certified copy of a letter dated February 3, 1953, from Honorable E. V. Huggins, Assistant Secretary of the Air Force, to the Attorney General, requesting the amendment of the condemnation proceeding entitled United States v. 1,701.73 Acres of Land, in the County of Kern, State of California, etc., et al., Civil No. 1201-ND, and the filing

Exhibit No. 3—(Continued)

of Declaration of Taking No. 2, together with an original and two copies thereof.

Please prepare and file an amended complaint including the additional land described in the enclosed Declaration of Taking No. 2, file the declaration and obtain the entry of a decree thereon providing for immediate possession of the land. A check in the amount of $205,000.00, representing the estimated compensation, will be made available by the District Engineer for depositing into the registry of the court.

Title evidence and appraisal reports covering the additional land being taken are being procured by the District Engineer and will be furnished you when available.

When the foregoing action has been taken, kindly furnish the Department with two copies of the amended complaint and the decree on Declaration of Taking No. 2, one set of which should be certified, together with the duplicate original receipts of the clerk of the court showing the deposit of the estimated compensation.

Sincerely,

/s/ JAMES M. McINERNEY,
James M. McInerney,
Assistant Attorney General.

Received Feb. 9, 1953, Los Angeles, Calif.

Enclosure
No. 188066 [130]

EXHIBIT No. 4

AW:imc
1201-ND

February 20, 1953

Air Mail

Lands Division
Land Acquisition Section
Department of Justice
Washington 25, D. C.

Re: United States v. 1,701.73 Acres of Land in Kern County, California, etc., et al. No. 1201-ND Civil.

Your reference: RJL-CMacM 33-5-1668-284

Gentlemen:

Reference is made to your airmail letter under date of February 5, 1953, enclosing certified copy of letter from the Assistant Secretary of the Air Force, together with original and two copies of proposed Declaration of Taking No. 2, by which you instruct this office to file an amended complaint in the above-entitled action to acquire additional land for the Edwards Air Force Base in the County of Kern, State of California. The District Engineer has today delivered to this office a check in the sum of $205,000, representing the estimated compensation for the land described in the Declaration of Taking.

Under date of February 10, 1953, the District Engineer forwarded to this office advance copy of a proposed Declaration of Taking Assembly No. 3 for the acquisition of fourteen additional tracts.

Exhibit No. 4—(Continued)

Your attention is invited to the fact that in both instances the acquiring agency requests the acquisition of the additional lands by amendment of the complaint in a pending action (Civil 1201-ND). It is therefore probable that by the time an amendment to include the property covered by Declaration of Taking No. 2 has been secured, a request for an amendment will be forthcoming to include property covered by Declaration of Taking No. 3. [131]

This entails a considerable amount of additional paper work and consumption of time, which would be obviated by the filing of a new action for the additional property sought to be taken rather than by the amendment of an existing action. The filing of a new action, when necessary, would simplify, to a large extent, the processing of the cases and negotiations for settlement.

The taking of the property in the Declaration of Taking No. 2, referred to in your letter of February 5, is almost certain to involve a bitter contest on the issue of value. The owner of this property has already pending suits against the Government for well over a million dollars. And the property included in the proposed Declaration of Taking No. 3 differs so widely in character (involving commercial mud mine deposits) from that taken in the original action, that a separate, independent action would greatly facilitate processing in this office.

It would be appreciated if you would discuss this problem with Mr. McPherson, who is now in Washington on other business, and authorize this office

Exhibit No. 4—(Continued)

to file new and independent actions for the additional lands sought to be acquired rather than by an amendment to the pending action. Please advise us by airmail or telegram of your determination hereon after Mr. McPherson has had an opportunity to discuss the matter with you.

Respectfully,

Walter S. Binns,
United States Attorney. [132]

EXHIBIT No. 5

Corps of Engineers, U. S. Army
Office of the District Engineer
Los Angeles District
751 South Figueroa Street
Los Angeles 17, California

Refer to File No. SPLRA 601.1 (Edwards Air Force Base — Tracts Nos. L-2040, L-2043, L-2071 and L-2072).

20 February 1953

Mr. Walter S. Binns
United States Attorney
Department of Justice
807 Federal Building
Los Angeles 12, California

Re: U. S. vs. 1,710.73 Acres of Land, in the County of Kern, State of California; etc., et al. Civil No. 1201-ND.

Dear Sir:

Inclosed is United States Treasurer's Check in

Exhibit No. 5—(Continued)

the amount of $205,000.00, being the amount of estimated compensation to be deposited with Declaration of Taking No. 2 in Condemnation Case No. 1201-ND Civil as to Tracts Nos. L-2040, L-2043, L-2071 and L-2072.

Kindly advise this office of the date of deposit of the check in the registry of the Court and the date of the filing of the Declaration of Taking in order that our required report to higher authority may be made.

Inclosed are two copies each of the Preliminary Title Certificates as to each of the above listed tracts. Upon being advised by your office that the Decree on Declaration of Taking has been recorded in Kern County, this office will cause a Certificate of Inspection to be made as to these tracts, and also order Continuation Title Certificates dated through the recordation date of the Decree on Declaration of Taking.

This office has been instructed by higher authority that an Order for possession of subject tracts is not to be requested at the time of filing the Declaration of Taking for the reason that determination of the date that possession is required is to be determined at a later date. Upon such determination appropriate request to your office to seek an Order of Possession will be made by this office.

This office has been advised that the request for inclusion of the land described in Declaration of Taking No. 2 in Condemnation Case No. 1201-ND

Exhibit No. 5—(Continued)

Civil, together with a request for the filing of the Declaration of Taking, was forwarded by the Assistant Secretary of the Air Force to the Attorney General on 3 February 1953. In the event you do not yet have your authority to file the declaration of taking and include the land described therein in Condemnation Case No. 1201-ND, it is requested that telephone inquiry be made by your [133] office of the Attorney General as to whether or not such instructions have been dispatched to your office on this matter.

Kindly acknowledge receipt of the inclosures on the extra copy of this letter and return to this office.

For the District Engineer:

Very truly yours,

/s/ J. L. MARITZEN,
J. L. Maritzen,
Chief, Acquisition Branch, Real Estate Division.

Received Feb. 20, 1953. Los Angeles, Calif.

Check Recorded 2-20-53. M.C.

5 Incls

1. U.S. Treas. Ck.
2. Cert. L-2040 (dup)
3. Cert. L-2043 (dup)
4. Cert. L-2071 (dup)
5. Cert. L-2072 (dup) [134]

EXHIBIT No. 6

AW:JW
No. 1201-ND

February 24, 1953

District Engineer
Los Angeles District
Corps of Engineers
P. O. Box 17277, Foy Station
Los Angeles 17, Calif.

Attention: J. L Maritzen, Chief, Acquisition Branch, Real Estate Division.

Re: U.S. v. 1701.73 Acres of Land in the County of Kern, etc., et al. No. 1201-ND. Edwards Air Force Base. Tracts Nos. L-2040, L-2043, L-2071 & L-2072.

Dear Mr. Maritzen:

This acknowledges receipt of United States Treasurer's Check in the amount of $205,000 to be deposited with a Declaration of Taking as to Tracts Nos. L-2040, L-2043, L-2071 and L-2072, together with two (2) copies of the Preliminary Title Certificate as to each of the above listed tracts.

We also acknowledge receipt of the Declaration of Taking designated as "Declaration of Taking No. 2" in Civil No. 1201-ND, signed by Edwin V. Huggins, Assistant Secretary of the Air Force.

In this connection reference is made to previous conversations with personnel of your office in which the desirability of acquiring the above numbered tracts by the filing of a new and independent condemnation proceeding, was discussed. As you are

Exhibit No. 6—(Continued)

undoubtedly aware, the acquisition of the above designated tracts will involve bitter and protracted litigation on the issue of value. The owner of these tracts has already filed suits against the Government in connection with this property for well over one million dollars. The amendment of the pending action (No. 1201-ND) by the inclusion of the subject tracts calls for much additional paper work in this office and a consequent expenditure of unnecessary time which could be entirely obviated by the filing of a separate action. [135]

Moreover, you have already advised us by forwarding an advance copy of a proposed Declaration of Taking assembly No. 3 for the acquisition of 14 additional tracts. This means that if successive amendment to a pending action to bring in additional tracts are to be filed, the amendment of No. 1201-ND to bring in the tracts above referred to would hardly be accomplished before a further amendment would be required to bring in the 14 additional tracts. This is productive of the possibility of unnecessary and endless confusion.

It is noted that the property included in the proposed Declaration of Taking No. 3 differs so widely in character, involving commercial mud mine deposits, from that taken in the original action that a separate, independent action would greatly facilitate the processing of the condemnation proceeding in this office and simplify the process of negotiation for settlement of the tracts taken in the original

Exhibit No. 6—(Continued)

action, without complicating the case by including tracts which are almost certain to be litigated.

The procedure above suggested, i.e., the filing of separate actions embracing the tracts described in Declaration of Taking No. 2 and in Declaration of Taking No. 3, is in line with that heretofore followed in this acquisition. There are already pending four actions affecting property to be taken for the Edwards Air Force base, namely, Nos. 1133-ND, 1147-ND, 1200-ND and 1201-ND.

This office has called the attention of the Attorney General to the desirability of making the additional tracts now to be taken, the subject of separate and independent actions for the reasons above stated. It will be appreciated if you will concur in our recommendation and transmit to your higher authority such recommendation with a request that the Attorney General be advised that these additional tracts affected by Declarations of Taking Nos. 2 and 3, may be acquired by the filing of separate actions if it seems desirable so to do.

Your co-operation in this regard will be greatly appreciated.

Respectfully,

Walter S. Binns,

United States Attorney. [136]

EXHIBIT No 7

U IILA CLR Telegram
209 LA WA /J-D/

Washington DC 2-25-53 759P

Walter S. Binns
US Atty 807 Fedl Bldg LA

Reurlet February 20 Civil 1201ND. Satisfactory to institute new case covering land declaration taking 2.

J Edward Williams ACTG Asst Atty General
20 1201ND 2. CD/812 P.

Received Feb. 26, 1953. Lands Division, Los Angeles, California.

(Auth to file separate suit.) Handwritten

EXHIBIT No. 8

AW:JW
No. 1253-ND
Air Mail February 27, 1953

Lands Division,
Land Acquisition Section,
Department of Justice,
Washington 25, D. C.

Re: U. S. v. 360 Acres of Land in the County of Kern, Calif., etc., et al. No. 1253-ND. Expansion of Edwards Air Force Base—Army. Your reference: 33-5-1668-284.

Gentlemen:

Reference is made to your letter under date of February 5, 1953 and to your telegram of February

25, 1953, concerning the acquisition of additional land for the Edwards Air Force Base.

Please be advised that a Complaint in Condemnation, numbered 1253-ND Civil, was this day filed to take and condemn the four additional tracts described in the Declaration of Taking, and that simultaneously therewith the Declaration of Taking was filed and check No. 71342 of the Treasurer of the United States in the sum of $205,000, was deposited into the registry of the Court.

The initial transcript will be forwarded to you as soon as the documents comprising the initial transcript can be prepared.

Respectfully,

Walter S. Binns,
United States Attorney. [138]

EXHIBIT No. 9

AW:JW
No. 1253-ND

March 3, 1953

Lands Division,
Land Acquisition Section,
Department of Justice,
Washington 25, D. C.

Re: U. S. v. 360 Acres of Land in the County of Kern, State of California, etc., et al. No. 1253-ND. Expansion of Edwards Air Force Base — Army. Your reference: 33-5-1668-284.

Gentlemen:

Supplementing my letter of February 27, 1953,

informing you of the filing of the above entitled condemnation proceeding, you will find enclosed herewith the following documents, comprising the initial transcript:

Certified and plain copy of Complaint.

Certified and plain copy of Decree on Declaration of Taking.

Duplicate original Certificate of the Clerk evidencing the deposit of $205,000.

A certified copy of the Decree on the Declaration of Taking has been forwarded to the County Recorder of Kern County, California, for recordation.

You will be kept advised of further progress in this matter.

Respectfully,

Walter S. Binns,
United States Attorney. [139]

Encs.

EXHIBIT No. 10

AW:JW
No. 1253-ND

March 4, 1953

District Engineer,
Los Angeles District,
Corps. of Engineers,
P. O. Box 17277, Foy Station,
Los Angeles 17, Calif.

Attention: J. L. Maritzen, Chief Acquisition Branch Real Estate Division.

Re: U. S. v. 360 Acres of Land in the County of

Kern, etc., et al. No. 1253-ND. Tracts L-2040, L-2043, L-2071 and L-2072. Edwards Air Force Base.

Dear Mr. Maritzen:

Enclosed herewith you will find copy of a Complaint filed February 27, 1953 in the above entitled action covering the four tracts owned by E. S. McKendry and Florence Lowe Barnes McKendry and others. Also enclosed is a copy of the Decree on the Declaration of Taking which was filed and entered March 2, 1953.

In preparing instructions for the Marshal to serve the defendants in this action, it appears that our files do not disclose an address for Benjamin C. and Kathryn May Hannam, record owners of Tract L-2071. Do you have their address in your records? If so, it would be appreciated if you would supply it to us.

Respectfully,

Walter S. Binns,
United States Attorney. [140]

Encs.

EXHIBIT No. 11

AW:JW
No. 1253-ND

March 18, 1953

District Engineer,
Los Angeles District,
Corps of Engineers,
P. O. Box 17277, Foy Station,
Los Angeles 17, Calif.

Attention: Mr. Wm. M. Curran, Attorney. Acquisition & Claims Branch Real Estate Section.

Re: U. S. v. 360 Acres of Land in the County of Kern, etc., et al. No. 1253-ND.

Dear Mr. Curran:

Pursuant to your telephonic request, enclosed herewith you will find an original and copy of the corrected first page of the Declaration of Taking filed in the above entitled action. This page was not re-written, just corrected.

On March 4, 1953 a conformed copy of the Decree on the Declaration of Taking was forwarded to you. A certified copy of the Decree was recorded March 5, 1953, in Book 2046, page 578, Official Records, Kern County.

Very truly yours,

Walter S. Binns,
United States Attorney. [141]

Encs.

EXHIBIT No. 12
SPLRA 601.1 (Edwards AFB—Condemnation Case No. 1253-ND)

24 March, 1953

Corrected Declaration of Taking

Division Engineer
South Pacific Division
Corps of Engineers, U. S. Army
P.O. Box 3339, Rincon Annex
San Francisco 19, California

Inclosed are two copies of the corrected first page of Declaration of Taking filed in the above entitled action. This page was not re-written, just corrected, by the local office of the Lands Division, Department of Justice.

For The District Engineer:

Harold E. Spickard,
Chief, Real Eestate Division.

1 Incl.

Corr. Pg#1 of D/T (dup)

cc: Walter S. Binns, U. S. Atty.
Att: Mr. A. Weymann [142]

EXHIBIT No. 13

United States
Department of Justice
Washington 25, D. C.

RJL:CMacM
33-5-1668-560

April 22, 1953

Walter S. Binns, Esquire
United States Attorney
807 Federal Building
Los Angeles 12, California

Dear Mr. Binns:

Re: Lands Division Matters.

Reference is made to the condemnation proceeding entitled United States v. 360 acres of land in Kern County, California, et al., Civil No. 1253-ND.

A review has been made of the appraisal report, prepared by Mr. Bernard G. Evans for the Department of the Army, covering the property included in the above-mentioned proceeding. The appraisal appears to have been satisfactorily prepared. However, unless an offer of settlement in the neighborhood thereof can be obtained in the near future, it is suggested that an additional appraisal be obtained in order that the Government may be adequately prepared for trial.

Your recommendation in the foregoing matter will be appreciated and upon receipt of the usual Form 25B for the preparation of an additional appraisal, prompt action thereon will be taken.

Sincerely,

/s/ J. EDWARD WILLIAMS,

Acting Assistant Attorney General.

Received April 27, 1953, Lands Division, Los Angeles, California.

EXHIBIT No. 14

[Telegram]

451 LA WA /J-D/

Washington 9-14-53 538P

Laughlin E. Waters

U. S. Atty., 807 Federal Bldg. L.A.

Rerulet September 9 Civil 1253ND. Oppose Motions to Dismiss and Set Aside Declaration of Taking. Move to quash subpoena. Authorities will be airmailed prior hearing. Advise whether Order of Possession requested August 18 obtained.

Perry W. Morton, Asst. Atty. General.

Received Sept. 15, 1953. Lands Division, Los Angeles, California.

9 1253ND 18

OHS 555P/HC 739P [144]

March 17, 1953

RJL:CMacM oak

33-5-1668-560

Honorable Harold E. Talbott

Secretary of the Air Force

Washington, D. C.

My Dear Mr. Secretary:

I have examined the complaint, the declaration

of taking and the decree on declaration of taking in the condemnation proceeding entitled United States of America v. E. S. McKendry, et al., Civil No. 1253-ND in the United States District Court for the Southern District of California concerning the acquisition of 360 acres of land in Kern County, California, designated as Tracts L-2040, L-2043, L-2071 and L-2072 of the Edwards Air Force Base.

The land is more fully described in the decree on declaration of taking.

The sum of $205,000.00 was deposited into the registry of the court as the estimated compensation at the time of the filing of the declaration of taking.

From my examination of the above-mentioned documents, I find that a valid title vested in the United States of America on February 27, 1953, to said land, pursuant to the provisions of an Act of Congress approved February 26, 1931 (46 Stat. 1421), subject, however, to existing easements for public roads and highways, public utilities, railroads and pipe lines.

Enclosed are certified copies of the complaint in condemnation and the decree on declaration of taking, together with the clerk's receipt showing the deposit of the estimated compensation.

Sincerely yours,

Attorney General.

Enclosure
No. 68249

Div. Engr.—South Pacific Division.

[Endorsed]: Filed June 17, 1955. [145]

[Title of District Court and Cause No. 1253-ND.]

AFFIDAVIT OF AUGUST WEYMANN

State of California,
County of Los Angeles—ss.

August Weymann, being first duly sworn, deposes and says:

That I am a resident of Los Angeles, California, and am retired; that I was and am a duly licensed attorney and a member of the Bar of the State of New York and of the State of California; that during the period from November 9, 1942, to February 28, 1955, I was either a Special Attorney in the Lands Division, Department of Justice, stationed at Los Angeles, California, or an Assistant United States Attorney of the Southern District of California, at Los Angeles; that during the period from December, 1952 to and including the date of my retirement, February 28, 1955, I was the attorney immediately in charge of the captioned proceeding and responsible for its conduct.

As an incident of the preparation of this affidavit, I [146] have examined the official files of the United States Attorney's office pertaining to the above-entitled case and, based upon the documents therein contained and upon my recollection of the events as they occurred, the following is a true and correct account of the institution and proceedings taken in connection with the conduct of this proceeding to the date of my retirement.

On or about December 9, 1952, there was received in the office of the United States Attorney at Los Angeles a preliminary draft of the Declaration of Taking assembly prepared for the acquisition of Tracts L-2040, L-2043, L-2071 and L-2072, collectively encompassing approximately 360 acres of land, in several ownerships, hereinafter identified as the Pancho Barnes property. This assembly was prepared in the office of the District Engineer at Los Angeles, and had been transmitted to the office of the Chief of Engineers for submission to the officers of the United States for handling and disposition.

Thereafter and on, to wit, February 9, 1953, there was received in the office of the United States Attorney at Los Angeles a letter from the Assistant Attorney General in charge of the Lands Division, Department of Justice, together with a certified copy of a letter, dated February 3, 1953, from the Honorable E. V. Huggins, Assistant Secretary of the Air Force, requesting the amendment of the condemnation proceeding then filed and yet pending in this Honorable Court, entitled United States v. 1710.73 Acres of Land in the County of Kern, State of California, etc., et al., numbered Civil 1201-ND, and the filing of Declaration of Taking No. 2, together with the original and two copies thereof. The certified copy of the letter of the Assistant Secretary of the Air Force is identified in the affidavit of Richard A. Lavine, filed herein, as Item No. 2. The Assistant Attorney General's let-

ter referred to above is identified in the Lavine affidavit as Item No. 3. [147]

Thereafter and on February 20, 1953, I prepared and directed to the Lands Division of the Department of Justice a letter acknowledging receipt of the letters, 2 and 3 above, and of the Declaration of Taking, and also the receipt of a check in the sum of $205,000, representing the estimated compensation. In my letter I called the attention of the Department of Justice to the fact that, in addition to the foregoing, I had already received an advance copy of a proposed Declaration of Taking assembly No. 3 for the acquisition of 14 additional tracts by way of amendment of Civil No. 1201-ND. For the reasons set forth in my letter of February 20, I requested specific authority and direction of the Attorney General to file a new and independent action for the acquisition of the so-called Pancho Barnes tracts, rather than to include said tracts by way of amendment in the existing action, 1201-ND, as well as a separate and independent action for the acquisition of the 14 additional tracts referred to in the preliminary draft of Declaration of Taking assembly No. 3. A copy of this letter is identified in the Lavine affidavit as Item No. 4.

On February 24, 1953, I addressed the District Engineer at Los Angeles, acknowledging receipt of the $205,000 for deposit, the preliminary title certificates covering the tracts above mentioned, and of Declaration of Taking No. 2, and the preliminary assembly of Declaration of Taking No. 3. In

the same letter I acquainted the District Engineer with the reasons for and the request made to the Attorney General for authority to proceed by way of separate and independent suit for the acquisition of both the Pancho Barnes tracts, covered by Declaration of Taking No. 2, and the 14 additional tracts covered by the preliminary assembly of Declaration of Taking No. 3. This letter is identified in the Lavine affidavit as Item No. 6.

Thereafter and on, to wit, February 26, 1953, there was received at Los Angeles, from the Acting Assistant Attorney General [148] in charge of the Lands Division, a telegram, dated February 25, 1953, identified in the Lavine affidavit as Item No. 7, reading as follows:

> "Reurlet February 20 Civil 1201ND. Satisfactory to institute new case covering land Declaration Taking 2.
>
> "/s/ J. Edward Williams Actg Asst Atty General",

whereupon, and pursuant to the foregoing authority and direction, the complaint in condemnation covering the Pancho Barnes property was prepared and filed in this court on February 27, 1953, and was numbered by the Clerk thereof 1253-ND.

On the same day, and pursuant to the same authority and direction, the caption and amending language in the Declaration of Taking transmitted with the Assistant Attorney General's letter of February 5, 1953, was conformed to the caption of the

instant suit and filed therein, and the sum of $205,000 was deposited in the registry of this court as the estimated just compensation. An ex parte decree was entered upon said Declaration of Taking, and notice of filing of the action was issued and placed in the hands of the United States Marshal for service on March 4, 1953. On March 11, 1953, at the request and direction of Pancho Barnes, I prepared and filed in this court, in this case, a petition for partial distribution of compensation pursuant to Section 258a, Title 40, U.S.C. The petition was signed by E. S. McKendry, Pancho Barnes, named in the proceeding as Florence Lowe Barnes, a.k.a. Florence Lowe Barnes McKendry, and William Emmert Barnes, and was supported by an affidavit of E. S. McKendry and William Emmert Barnes attesting to the lack of interest in the property of Desert Aero, Inc., which, according to the then title certificates, had a conflicting interest in the property. The foregoing petition for partial distribution, executed as aforesaid, constituting a general appearance of the parties signatory thereto, [149] supplemental instructions were issued to the Marshal not to serve the process upon those defendants.

In the meantime and on March 3 and 4, 1953, respectively, the Department of Justice and the District Engineer were furnished with the preliminary transcripts of the case as then filed, including certified and plain copies of the complaint, certified and plain copies of the Decree on the Declaration of

Taking, and duplicate original Certificate of Clerk, evidencing the deposit of the estimated just compensation, all as required by the regulations of the Department of Justice.

On March 17, 1953, the Attorney General of the United States, having caused an examination to be made of the documents comprising the preliminary transcript, approved the same and rendered his preliminary title opinion to the Honorable Harold E. Talbott, Secretary of the Air Force. The opinion covers the tracts above mentioned, comprising the 360 acres more particularly described in the Decree on the Declaration of Taking. (Lavine affid.)

Pursuant to the request of the District Engineer, copies of the corrected first page of the Declaration of Taking were transmitted to him, and in turn by him, on March 24, 1953, the corrected first page was forwarded through channels to the Division Engineer at San Francisco. See Items 11 and 12 on the Lavine affidavit.

In determining upon the propriety of the request to the Attorney General for permission to proceed for the acquisition of the so-called Pancho Barnes tracts by separate and independent suit, rather than by way of amendment of 1201-ND, I was motivated by the conditions and circumstances set forth in my letter of February 20, 1953, and none other. At the time said letter was written I was not acquainted with General Joseph S. Holtoner, Colonel Marion J. Akers, or Lieutenant Colonel Marcus B. Sacks. At that time I had not had any communication of

[150] any kind, character or description with those officers or either of them. My first contact with either was as an incident of my preparation of the Government's application for an order of immediate possession in this case.

/s/ A. WEYMANN.

Subscribed and sworn to before me this 9th day of June, 1955.

[Seal] /s/ RICHARD A. LAVINE,
Notary Public in and for said County and State.

[Endorsed]: Filed June 17, 1955.

[Title of District Court and Cause No. 1253-ND.]

AFFIDAVIT OF LT. COLONEL ROBERT P. FOLEY

Robert P. Foley, Lieutenant Colonel, USAF, Base Commander, Edwards Air Force Base, Edwards, California, being duly sworn according to law deposes and states as follows:

That as Base Commander under appropriate Air Force Regulations and Directives, he is charged with the responsibility of supervising the housing of military and civilian personnel working at Edwards Air Force Base. That he is similarly charged with responsibility for supervising those Air Force facilities, such as the Base Exchange and the Com-

missary, which supply a few of the living needs of personnel at the base.

That there are 1,050 family housing units, commonly known as the Wherry Housing project, located on this Federal reservation, a few miles from the operational part of the base and outside the base security gates. That these units were constructed in two increments beginning in 1950 pursuant to Title VIII, National Housing Act (P.L. 211, 81st Congress).

That the need for such housing at the base was occasioned by the fact that the base was located at an extremely remote site in the Mojave Desert where no adequate private rental housing nor supporting community facilities were available.

That after a determination by the Secretary of the Air Force that a lease would effectuate the purposes of Title VIII National Housing Act, a lease for each increment of housing was entered into bebetween the Secretary of the Air Force and the sponsor corporation, whereby certain described lands were leased to the corporation for 75 years for the purpose of constructing a housing project and leasing the housing units to military and civilian personnel. That under Title VIII, National Housing Act, the sponsor corporations received mortgage insurance from the Commissioner, Federal Housing Administration. That the Secretary of the Air Force, in each instance, entered into the leases under the authority of Act of August 5, 1947

personnel to the housing units in accordance with applicable Air Force Regulations and established base policies and procedures. [154]

That the activities of the base are expanding with an accompanying increase in the number of personnel living and working at the Base. That it is anticipated that this situation will continue and that housing and particularly the supporting community facilities will continue to be below existing need in the immediate future.

/s/ ROBERT P. FOLEY,
Lt. Colonel, USAF.

Sworn to and Subscribed before the undersigned this 10th day of June, 1955.

/s/ LAURANCE V. GOODRICH,
1st Lt., USAF. Judge Advocate, Hq Air Force Flight Test Center. [155]

[Endorsed]: Filed June 17, 1955.

[Title of District Court and Cause No. 1253-ND.]

AFFIDAVIT OF COLONEL MARION J. AKERS, USAF

Marion J. Akers, Colonel, USAF, Chief of Staff, Air Force Flight Test Center, Edwards Air Force Base, California, being duly sworn according to law, deposes and states as follows:

The mission of the Air Force Flight Test Center at Edwards Air Force Base, California, is to accomplish functional (as distinct from engineering)

flight tests of complete manned aircraft weapon systems, including components and allied equipment; to conduct engineering evaluation flight tests of aircraft and power plants; to accomplish static firing tests of guided missile power plants; to accomplish research and development related to such tests; to plan for, control and operate the Experimental Rocket Engine Test Station, the USAF Experimental Flight Test Pilot School, Air Force Flight Test Center Track Testing Facilities, and other special test facilities; to provide facilities and special services for contractors and for other governmental agencies in support of the mission of the Air Research and Development Command.

In order to properly conduct this mission, it is absolutely essential that the Air Force Flight Test Center be located in an area which is relatively uninhabited, with weather conditions which permit a maximum amount of flight testing and an area wherein these tests can be conducted with a maximum amount of safety, security and economy. The purpose of testing new aircraft is to determine their capabilities and discover the fixes and alterations necessary to develop and provide the desired air vehicle. In the conduct of tests of new and experimental aircraft, difficulties are encountered which cannot be foreseen. If these tests are conducted in or over an area which is relatively uninhabited and free from industrial and commercial development, the safety of the aircraft and the crew is greatly enhanced. Safety for commercial, industrial and

private enterprise is also greatly enhanced by having an area wherein crashes, emergencies, or other mishaps may occur, without endangering the lives and property of individuals. There is also a great economy realized from the standpoint of loss of time and equipment and the prevention of possible claims against the government for damages. In the conduct of these tests, it is necessary to maintain the maximum amount of security since the work being conducted vitally affects the future potential of the United States military services.

In the build up of the Air Force Flight Test Center Congressional approval and funding have been secured for the acquisition of a large area suitable for meeting requirements satisfactory for the above. The approved area for the military reservation totals approximately 300,000 acres. The Pancho Barnes property, generally speaking, is located in the west central portion of the approved reservation area. In addition, this property is located approximately three and one-half miles off the end of an active test runway which has recently been completed as a part of the new permanent base. This property also lies within, approximately, five miles of the end of two other runways being used for test purposes. This property also lies on the center [157] line extension of the new test runway which will have a one mile clear zone area on either side of the center line extension between Rogers Dry Lake and Rosamond Dry Lake. The entire Pancho Barnes property lies within this two mile clear

zone. This clear zone is a safety factor and it is planned that within this area all obstructions to flight and safety for emergency landings will be removed. This will provide an area where expensive test aircraft may be landed with a minimum amount of damage and a maximum amount of safety for crew members in case of emergency.

Within this two mile clear zone and extension of the runway there is danger not only from emergency landings of aircraft, but from the possibility of falling objects such as bombs, tip tanks, and other items carried by test aircraft. There is also danger of fires, explosions and contamination from materials used in the test of certain equipment such as nitric acid, hydrogen peroxide, liquid oxygen, alcohol and other chemicals.

Within this clear zone area the operation of any type private flying field presents a grave danger of mid-air collision of aircraft and is therefore a serious hazard to flying safety.

Because of the difficulties encountered in the testing of new and experimental aircraft, mishaps or accidents do occur. Many of these occur shortly after takeoff or upon the approach to a landing or during the actual landing phase of flight. The location of this property within three and one-half miles of the end of an active test runway places it in a dangerous location.

An "All Altitude Speed Course" is used in connection with the testing of aircraft. The location of this speed course is such that the path of flight

of aircraft using this facility is over or near the Barnes property.

A Radar Telemetering facility is also used in connection with the testing of aircraft. Its location within approximately three miles of the Barnes property is dictated by its function, mission, and limitations imposed by the equipment used therein. Electronic disturbances cannot be tolerated in the operation of this facility and it is possible that such electronic disturbances could be generated from facilities or equipment used on the Barnes property.

/s/ MARION J. AKERS,
Colonel, USAF.

Sworn and subscribed to before me this 3rd day of June, 1955.

/s/ MARCUS B. SACKS,
Lt. Colonel, USAF. Staff Judge Advocate, Hq Air Force Flight Test Center. [158]

[Endorsed]: Filed June 17, 1955.

[Title of District Court and Cause No. 1253-ND.]

AFFIDAVIT OF BRIG. GENERAL J. S. HOLTONER

J. S. Holtoner, Brigadier General, USAF, Commander of Air Force Flight Test Center, Edwards Air Force Base, California, being duly sworn according to law deposes and states as follows:

That he did not have any control or voice in the

institution of the condemnation action against the Pancho Barnes property. That he did not in any manner whatsoever give to any person advice concerning the institution of the condemnation proceedings against the Pancho Barnes property. That he did, in connection with the Government's motion for an order of immediate possession of Pancho Barnes property, authorize officers of the Air Force Flight Test Center to justify the necessity, consistent with the operational needs of Edwards Air Force Base, of having immediate possession of the said Pancho Barnes property. That he did not receive instructions from any source whatsoever to take any action whatsoever in order to get rid of Pancho Barnes.

That he denies emphatically that he ever informed the defendants or any of them that Edwards Air Force Base would use the defendants' property and improvements for private uses and purposes. That the entire Pancho Barnes property has not yet been turned over by Corps of Engineers, U. S. Army, to Edwards Air Force Base for use. That Edwards Air Force Base now intends and always has intended to clear all the improvements from the land of Pancho Barnes since her properties are within the clear zone established for the new runway. All obstructions in the clear zone must be removed as a safety factor in flying operations. That he was not influenced in any way whatsoever, as to the proposed use of the Pancho Barnes property, by the fact that Pancho Barnes has been ac-

tively contesting the right of the United States to condemn her property.

/s/ J. S. HOLTONER,
Brig. General, USAF.

Sworn to and subscribed before the undersigned this 3rd day of June, 1955.

/s/ MARCUS B. SACKS,
Lt. Colonel, USAF. Staff Judge Advocate, Hq Air Force Flight Test Center. [160]

[Endorsed]: Filed June 17, 1955.

[Title of District Court and Cause No. 1253-ND.]

ANSWERING AFFIDAVIT TO ALL AFFIDAVITS FILED BY GOVERNMENT WITNESSES IN THE LAST 1½ DAYS OF THE HEARINGS OF JUNE 16 AND 17, 1955, AS PER INSTRUCTIONS OF THE COURT

I, Pancho Barnes, a defendant in the above-entitled case, being first duly sworn, depose and say:

That it appears the Government has gone to lengths to complicate this case by overwhelming the Honorable Court with a great diversity of incompetent, immaterial, and irrelevant material in Court and by way of affidavit.

The affiant feels that the Government did waste two days of the Court's valuable time and did impose upon the defendants and affiant by attempting on May 23, 1955, to discredit the affiant and did on

June 6th waste time by not cooperating with the defendants and producing the papers needed to prove this case to the Honorable Court.

The affiant has dissected individually in writing the affidavits being here answered of the Government witnesses and found that a true and complete explanation does consume so many pages of writing that the simplicity of the case may be lost when [161] it is contemplated that sometimes it is difficult "to see the forest for the trees."

Therefore, the affiant does hereby as tersely and as concisely as is consistently possible attack said Government witnesses' affidavits.

Here refer to the affidavit of Richard A. Levine, re Files of U. S. Attorney's Office. Refer to item 2, which says, "Certified copy of letter of February 3, 1953, from E. V. Huggins, Assistant Secretary of the Air Force, to the Attorney General." Attention is now directed to the letter labeled exhibit 2 of the affidavit. This is not a certified copy of a letter. It is a photostatic copy of a certified copy of a copy of a letter. The letter is not signed but only stamped "E. V. Huggins." It does not have a heading, or tract numbers, or a date. The date is written in with ballpoint pen on the photostat itself, and initialed "RAL" in ink presumably by the maker of the affidavit, Richard A. Levine, in Los Angeles. As this appears to be the only authority purported to institute proceedings against the defendants, this document is insufficient under the rules of evidence. The best evidence would be the signed original, complete with date and heading,

showing the signature of E. V. Huggins. The affiant contends that as the Air Force did fly the large bulky brochures of the master plans of the air base from Washington to have in Court, and then admitted that there was no mention of the subject property in said plans; the Government could have more easily shown the original letter if such existed. The affiant does demand that if said letter is to be considered at all for any purpose that the original yet be produced. The defendants definitely question the date. The affiant, should such letter exist, then does contend that the Assistant Secretary of Air Huggins did not know the location of the subject property as the letter states "The land is required for construction purposes." It was conclusively proved to the Court that no construction [162] purposes were ever intended. However, if the Secretary believed that the land was required for construction purposes he could have believed that the subject property was located where it would have been included under Public Law 564 of the 81st Congress. The words of Congress are conclusive and the subject property was not included in Public Law 564 of the 81st Congress, which is the only specific acquiring statute employed.

For brevity refer to the list of documents as itemized by Richard A. Levine included and appended to his affidavit. Items (referred to as exhibits) Nos. 1, 3, 5, and 13 are photostatic copies of apparently signed, sent, and received originals. Items 2, 4, 6, 8, 9, 10, 11, and 12 are simply photostatic copies of unsigned carbon copies completely

unauthenticated, not showing that they were ever sent or received and are not admissible under the rules of evidence where the originals, if any, would be the best evidence. The last item of the affidavit, which purports to be a copy of a letter dated March 17, 1953, to Secretary of the Air Force Talbot from "Attorney General" is only a typewritten letter, unsigned, unauthenticated, not showing that it was sent or received and not admissible under the rules of evidence, as the best evidence would be the original, if any.

The unsigned, unauthenticated letters mostly refer to making a separate condemnation suit for the defendants. Referring to item exhibit 4, letter dated February 20, 1953, mentions of "Declaration of Taking No. 3," "involving commercial mud mine deposits." In the item exhibit 6, letter dated February 24, 1953, again mentions the Declaration of Taking No. 3, "involving commercial mud mine deposits." Now, the affiant feels that this "Declaration of Taking No. 3" referring to the "mud mines" is very significant because in the Congressional hearings of the 81st Congress the Air Force lobbyists do state definitely to Congress that a deal has been made with the mud mines and that it has been [163] agreed that they be relocated on a lake to the "southwest". The mud mines were very definitely included in Public Law 564 of the 81st Congress and were considered most important of all requirements. In Defendants' Exhibit B, the letter headed "Acquisition No. 20," which was submitted pursuant to Public Law 155 of the 82nd Congress, the

subject property is not mentioned, but it says, "It is proposed to relocate the mud mine operators at Rogers Lake to the Buckhorn Dry Lake area." This is the area of the subject property. The map included in the same Defendants' Exhibit B was not the same as seen by the defendants in the engineers' files but did correspond in priority numbers as in the map in Defendants' Exhibit A, showing the subject property in priority 4 and far away from the land as included under Public Law 564 of the 81st Congress. The mud mines were the main subject before the 81st Congress and were the only commercial business mentioned. The only material point in reference to the mud mines versus the subject property is that while Congress was told that a deal had been made with them a condemnation suit No. 1289-ND on the mud mines was filed some five months after the so-called Declaration of Taking was filed on the subject property. A condemnation suit has not been necessary to clear the title on any other properties where deals were made in the Muroc area. There seems to be no question that the Government has played fast and loose with the statutes, and is now attempting to "throw sand in the eyes" of the Court.

Regarding the affidavit of August Weymann, it is only a recitation and reiteration of the affidavit of Richard A. Levine's conglomeration of so-called exhibits. This affiant did phone Mr. Weymann and he said that he had had the Declaration of Taking No. 2 made over as was testified to by Mr. McPherson on the stand. No one, however, has ever given

his affiant any reason why there was such a rush, f any, that "wires" were necessary to institute a "new" suit. The affiant does point out that the [164] Declaration of Taking was not changed by order of the Assistant Secretary of Air Huggins, who signed the original document. There was in fact no authority from anyone to change the document. There was only a purported wire or teletype authorizing institution of a "new" case, and not by the Assistant Secretary of Air Huggins. A Declaration of Taking in Eminent Domain corresponds to a "deed." It is well settled by law that any alteration of a deed nullifies and voids same. While Mr. Weymann was under the direction of the Department of Justice and may have had authority to institute a new suit he had no authority to change or alter a document signed by the Assistant Secretary of Air Huggins. Nor did Mr. Huggins give such authority to either the Department of Justice or to Mr. Weymann.

The affiant does claim that the Declaration of Taking No. 2 in case No. 1201-ND was never intended as a document to take the subject property but was used as a "gimmick" in a "pinch." This contention is borne out by the absolute fact that William M. Curran did testify on the stand that he had caused the document to be made on November 24, 1952. He also testified to and put into evidence a wire dated December 1, 1952, to the effect that if an option for the subject property could not be obtained then a condemnation assembly should be prepared. There is a definite admission here that

the document entitled "Declaration of Taking No. 2" in case No. 1201-ND was not prepared by authority of the wire of December 1 as said document was prepared previous to the wire of December 1, 1952. The declaration of taking does not read to show that it was intended to add lands to case No. 1201-ND, which would seem to be the legally consistent showing if such were true. Case No. 1201-ND consists of 1,710.73 acres of land and 42 separate owners. It was filed many months previous to the case on the subject property. The affiant does not understand amending a complaint involving 42 separate owners by adding new owners. However, there is evidence [165] that the Assistant Secretary Huggins thought the subject property was needed for construction, and as there is definite evidence that there was no statute that would include the subject property subsequently made by Congress, then the affiant believes that the Declaration of Taking No. 2 was made over and used as it might be less questioned by Assistant Secretary Huggins. However, Mr. McPherson did explain from the stand that the Secretary didn't know what he was signing anyway. Also, the Schedule A, being a description of the subject properties, does not show that it was seen or acknowledged by the Assistant Secretary and it is not signed or initialed by the Assistant Secretary or anyone else.

Refer to the affidavit of J. S. Holtoner. General Holtoner admits that he gave instructions to officers under his command to "justify the necessity" for the subject property. Whereupon "heroic" at-

tempts which are full of "holes" were made to this effect. However, the determination of necessity could only be made by the Secretary or the Assistant Secretary of the Air Force and then only under and pursuant to the specific statute Public Law 564 of the 81st Congress, passed June 17, 1950, which showed no necessity for the subject property nor did it include the subject property.

"Eminent domain statutes are strictly construed and must be strictly complied with to pass title to sovereign." U. S. v. 8,557.16 Acres of Land in Pendleton County, W. Va., D. C. W. Va. 1935, 11 F. Supp. 311.

"Express legislative power to procure is necessary to authorize the condemnation of private property for public use." U. S. vs. Rauers, D. C. Ga. 1895. 70 F. 748.

"The power of eminent domain is inherent in the Federal Government as an aspect of sovereignty, subject to requirements of U.S.C.A. Const. Amend. 5, that just compensation be paid, but power to condemn may be exercised only when explicitly by statute." U. S. vs. Fisk Bldg., D. C. N. Y. 1951, 99 F. Supp. 592. [166]

General Holtoner had no power to "justify necessity" for any purpose.

Furthermore, Holtoner's affidavit is quite contrary to the testimony from the stand in the case Barnes v. Holtoner, when he contended that he was acting under color of his authority. This affiant does here state that Holtoner did inform the defendant that he would use the subject property in-

tact and in any way he wished. As to whether the hastily made over Declaration of Taking No. 2, case No. 1201-ND, as "corrected," naming the subject property, and the Complaint in Condemnation made, signed, and filed on the 27th of February, 1953, was done through the instigation of Holtoner the defendants and affiant had General Holtoner's word for it. The day before the changing of the Declaration of Taking and the filing of same, Holtoner informed the defendants that there would be "immediate action". And there was! He said that he would get rid of the defendants and that he could be rough about it, too—he could drop napalm bombs on the defendants. Later, when his rage somewhat subsided, he remarked in the presence of this affiant and others, "It's too bad we can't do things like that in this country!" The scene with Holtoner, in which the defendants were informed by Holtoner that he would get rid of them immediately, is the only logical explanation that would cause the entire changing of a serious and important document such as a Declaration of Taking. Changing the document showed haste and disregard of legal formality. As there is no other evidence that haste was required, it is still conclusive to this affiant as to what happened and why the Government should grab an existing Declaration of Taking and make it over.

Refer to the affidavit of Lieutenant Colonel Robert F. Foley. The affiant does welcome this affidavit as accumulative evidence as to what the defendants refer to as the "monopoly town" of Edwards. It

confirms the allegations of the defendants that many [167] thousands of people live closer to the base activities than the subject property. This town of Edwards is in a more vulnerably situated location than the subject property. This town is leased to private enterprise. The Government forcibly took away the rights of and discriminated against the small business people in the area and gave away to a monopoly the inherent rights of the local people with great injury to many, including the defendants in this case.

The affidavit of Lieutenant Colonel Foley is, however, untrue regarding the distance necessary to travel to places where purchases could be had equivalent to those offered at Edwards. The town of Rosamond, more adequate than Edwards, is only 15 miles from Edwards. There is also Ma Green's restaurant, liquor store, etc., and garage and service station right across the tracks across the road (Highway 466) from the base; approximately 5 or 6 miles from the congested population and much closer to the north base than Edwards. North Muroc is close and there is much to be found all along Highway 466, including the town of Boran, etc.

Referring to the affidavit of Colonel Akers. This affidavit is contrary to the affidavit of Lieutenant Colonel Foley. Akers says, "It is absolutely essential that the—area—is relatively uninhabited." It is inconsistent that they built the monopoly town of Edwards and the Wherry housing with several thousand people in that vicinity. Colonel Akers states that a "maximum amount of security" is re-

quired. However, the whole place is wide open and inviting trade from the public and closer than the subject property. Any hazard that the subject property might be exposed to is equally hazardous to the town of Edwards, and for that matter the whole surrounding desert with many communities. The airport on the subject property operated for 9 years with no conflict and there is no abnormal hazard or conflict there. Any interference or electronic disturbance is absurd. As to the "clear zone" where "expensive test aircraft may be landed with a minimum amount of [168] damage" extending from Rodgers Dry Lake to Rosamond Dry Lake, the land around the Buckhorn area is extremely rugged and to level it would be beyond reason. The affiant does assure the Honorable Court that the subject property is plenty far away from the air base runways with regards to every conceivable reason. The new runway will, because it is so very long, keep aircraft even further away from the subject property. Colonel Akers has violated the sanctity of his oath repeatedly on both material and immaterial questions before the Court and by way of affidavit. This present affidavit is not so much perjurous in fact as it is in intent to mislead the Court, as its substance, in part true, is not any more applicable to the subject property than to the community of Edwards.

The map, Government exhibit number 4, was introduced without any testimony on either side. The affiant did request the Government to allow her to use this map for testimony when she was on the stand. The Government refused. Said map is made

with the intention of trying to implicate the subject property in a claim for "necessity." To an uninformed person who is not familiar with the terrain and with the operation of aircraft, the map might be "impressive." To an informed person familiar with the precise situation, terrain, etc., the map is ridiculous! Should this map be of any material interest to the Court, the affiant does demand a verbal explanation before the Court. The map has the following blatant fallacy: (1) The "paddle-like extensions" of the runways are theoretical, not practical, and mean nothing. Note the northern runway "paddle-like extension" crosses Highway 466 and goes off the base and is over an inhabited area. The western "paddle-like extension" of all the shown three runways all cross county-owned and maintained and heavily trafficed highways closer to the subject property by a question of several miles. The Government maps put into evidence before Judge Beaumont showed eight runways and sixteen "paddle-like extensions" that crossed the Wherry housing, etc., etc. [169] (2) This map does not show the Wherry housing, monopoly town of Edwards, etc. (3) This map shows the so-called "clear zone" going over Buckhorn Lake where the mud mines were to be located according to the testimony given Congress and according to the "acquisition project No. 20," Defendants' Exhibit B, pursuant to Public Law 155 of the 82nd Congress. (4) The map does not indicate the rugged and extremely rough terrain where a "clear zone" would not economically be within reason.

The affiant does believe that the only truly material subjects are the improper institution of the condemnation complaint made in bad faith, the alteration of the Declaration of Taking, the estimate of just compensation which was obviously made in bad faith, the ex parte judgment which is unconstitutional.

Please refer to and read carefully the points and authorities cited in both the motion to dismiss and the motion to set aside the Declaration of Taking and vacate the ex parte judgment.

The affiant does feel that "right or wrong, it's my country" and should the Government really have a true necessity for the subject property in the interests of our country, then whether the statutes be right or wrong the Government should have said property without question. However, it is the duty of all the patriotic citizens of this country to fight Government oppression as a sovereign people and to insist that the Government proceed in a legal manner under the statutes. This fight is more paramount than any war on the face of the earth—that of keeping America a free country. It is also the duty of the Honorable Court to uphold the statutes and the laws as made by Congress and to uphold the Constitution of the United States of America. Without the honor of our judges we would lose our birthright as a free people!

Please read the deposition of Marvin Edwin Whiteman taken October 13, 1953, and accepted into evidence February 25, 1954, by Judge Beaumont. This deposition, together with the affidavit

[170] of the defendants already on file, as a prima facie showing as to the value of the subject property, should be sufficient evidence to easily justify the Honorable Court in setting aside the Declaration of Taking and vacating the ex parte judgment.

Of course, as the Declaration of Taking is null and void because of alterations, the prima facie value of the property may not need to be considered.

/s/ PANCHO BARNES.

Subscribed and sworn to before me this 5th day of July, 1955.

[Seal] /s/ RICHARD C. MARSH,

Notary Public in and for the County of Los Angeles, State of California. My Commission Expires August 18, 1958. [171]

Acknowledgment of receipt of copy attached. [172]

[Endorsed]: Filed July 5, 1955.

[Title of District Court and Cause No. 1253-ND.]

ORDERS ON MOTION TO DISMISS THE COMPLAINT AND MOTION TO SET ASIDE THE DECLARATION OF TAKING AND TO VACATE AND SET ASIDE THE EX PARTE JUDGMENT ENTERED THEREON

On April 22, 1955, defendants E. S. McKendry, Florence Lowe Barnes McKendry, and William Emmert Barnes filed a motion to dismiss the complaint and on the same day filed a motion to set

aside the Declaration of Taking dated February 27, 1953, and to vacate and set aside the ex parte judgment entered thereon on March 22, 1953.

The defendants filed a supplement to the motion to dismiss on June 1, 1955, and it included a "more definite statement" in response to plaintiff's motion for a more definite statement filed May 10, 1955.

The motion to dismiss listed seven grounds. The supplement to the motion repeated these seven grounds with amplification and elaboration. Five additional grounds are set forth in the supplement.

The motion to set aside the declaration of taking and to vacate and set aside the ex parte judgment entered thereon is based on four grounds. A supplement to the motion to set aside the declaration of taking was filed on June 1, 1955. The supplement adds two grounds. [173]

The motions came on for hearing before the Court on May 2nd, May 23rd and June 16th and 17th, 1955. The defendants appeared in propria persona and the plaintiff was represented by the United States Attorney, Joseph F. McPherson appearing. Oral and documentary evidence was received on behalf of the parties.

The record discloses that similar motions were filed in this action by the defendants on September 5, 1953. Long and protracted hearings were held before the Honorable C. E. Beaumont, Judge of this Court, now deceased, and orders were entered by Judge Beaumont on March 23, 1954, denying both motions. A comparison of the motions heard by

Judge Beaumont with the pending motions and a review of the transcripts of the hearings before Judge Beaumont disclose that substantially the same matters were before Judge Beaumont as were presented at the hearings on the pending motions, with the exception of the fifth ground of the supplement to the motion to set aside the Declaration of Taking filed on June 1, 1955, which ground in substance alleges that the Declaration of Taking is a fraudulent, manufactured or forged document.

Some of the matters of which the defendants complain were the subject manner of a law suit in this Court entitled "Pancho Barnes vs. Joseph Stanley Holtoner and Marcus B. Sacks", bearing No. 15403-C. The case was heard by the Honorable James M. Carter, Judge of this Court. Findings of fact, conclusions of law and judgment were filed adverse to the plaintiffs in that action.

The pending motions boil down to essentially six grounds. Many facets of these grounds appear in the record, all of which have been considered by the Court in reaching the conclusions hereinafter set forth. These six grounds [174] and their facets may be summarized as follows:

1. The property was not taken under Public Law 564, 81st Congress, 64 Stat. 236, or any other law.

2. Fraudulent representations were made to Congress.

3. Absence of necessity for the taking of the property.

4. The deposit made by the plaintiff to the Registry of the Court at the time of the taking was grossly inadequate.

5. Unlawful and illegal discrimination was practiced against the defendants and other land owners.

6. That the Declaration of Taking was fraudulent, manufactured or forged.

The six grounds will be considered ad seriatim.

1. The complaint and the Declaration of Taking filed herein on February 27, 1953, state that the "authority for the taking is the Act of Congress approved February 26, 1931 (46 Stat. 1421; 40 U.S.C., Sec. 258a), and acts supplementary thereto and amendatory thereof, and under the further authority of the Act of Congress approved August 1, 1888 (25 Stat. 357; 40 U.S.C. Sec. 257); and the Act of Congress approved August 18, 1890 (26 Stat. 316), as amended by the Acts of Congress approved July 2, 1917 (40 Stat. 241) and April 11, 1918 (40 Stat. 518; 50 U.S.C. Sec. 171), which acts authorize the acquisition of land for military purposes; the Act of Congress approved August 12, 1935 (49 Stat. 610, 611; 10 U.S.C. 1343 a, b, and c), which Act authorized the acquisition of land for Air Force Stations and Depots; the National Security Act of 1947 approved July 28, 1947 (61 Stat. 495); the Act of Congress approved June 17, 1950 (Public Law 564, 81st Congress); and the Act of Congress approved September 6, 1950 (Public Law 759, 81st Congress), which act appropriated funds for such purposes." [175]

Edwards Air Force Base (formerly Muroc Air Force Base) is presently a special installation under the Air Materiel Command and, among other things, is the flight test station for all new aircraft being produced for the United States Air Force.

The mission of the Air Force Flight Test Center at Edwards Air Force base is, among other things, to accomplish functional flight tests of complete manned aircraft weapon systems, including components and allied equipment; to conduct engineering evaluation flight tests of aircraft and power plants; to accomplish static firing tests of guided missile power plants; to accomplish research and development related to such tests; to plan for, control and operate the experimental rocket engine test station, the USAF experimental flight test pilot school, Air Force flight test center track testing facilities, and other special test facilities, and to provide facilities and necessary services for contractors and other governmental agencies in support of the prescribed mission of the Air Research and Development Command.

Edwards Air Force Base was established many years ago. Several enlargements of the area of the Base and changes in the mission and functions thereof have been authorized and undertaken. At present the base encompasses an area of approximately 300,000 acres being developed in accordance with a master plan approved in 1950.

The enlargement of Edwards Air Force Base involved, among others, this condemnation action, resulting from the determination of necessity made

by the Secretary of the Air Force under and pursuant to the several statutes referred to in the complaint. [176]

Specific authorization to acquire the lands necessary to effectuate the determination of the Secretary of the Air Force and the appropriation of funds required for that purpose is found in the Act of June 17, 1950, Public Law 564 of the 81st Congress (64 Stat. 244); the Act of September 6, 1950, Public Law 759 of the 81st Congress, (64 Stat. 595, 748); the Act of January 6, 1951, Public Law 911 of the 81st Congress (64 Stat. 1223-1233); the Act of January 6, 1951, Public Law 910 of the 81st Congress (64 Stat. 1221, 1223).

Public Law 564 of the 81st Congress provides in part:

"The Secretary of the Army * * * is hereby authorized to establish or develop military installations and facilities by the construction, installation or equipment of temporary or permanent public works including buildings, facilities, appurtenances, and utilities as follows: * * *

"Muroc Air Force Base, California; * * * land for base expansion * * *."

Title 4 of Public Law 564 authorizes the appropriation for the construction and expansion of the air base described above in the amount of $159,006,-593.00. Title V of Public Law 759 of the 81st Congress and Public Laws 910 and 911 of the 81st Congress authorize supplemental appropriations for the acquisition of land and the construction work on the Air Base.

2. Defendants allege that incorrect and misleading information was given to the Congressional Committee of the 81st Congress regarding land for base expansion at Muroc at the time the Committee was considering Public Law 564. It is alleged that Congressman Johnson was misled and influenced by the local Commanding Officer and that the Committee was [177] misled by "Air Force Lobbyists". Particular complaint is made of a statement made by Congressman Johnson to the Committee. Congressman Johnson visited the air base and surrounding area and furnished a written report to the Committee. When questioned by the Committee as to the town site, he stated, "This is not a town; it is only a station; they are building in that area;" and of the statement of Colonel Myers that "it [the town site] is a stop on the railroad; there is a post office there and a few other buildings". (Government's Exhibit No. 5 and Defendants' Exhibit "K".) Defendants contend that this information was false and misleading because of the existence in the townsite of homes, motels and other business establishments. This Court is of the view that it is limited to the question of the power of Congress and not to the reasons which prompted Congress to enact the law. (Angle v. Chicago, St. Paul, Minneapolis and Omaha Railway Co. 151 U.S. 1, 38 L. Ed. 5.)

3. The defendants contend there was no necessity for the taking of the property in question. There can be no question from the record that the defendants firmly believe that no necessity exists for the

taking of their property. The affidavit of Colonel Marion J. Akers, USAF, Chief of Staff, Air Force Flight Test Center, Edwards Air Force Base, California, and the affidavit of J. S. Holtoner, Brigadier General, USAF, Commander of Air Force Flight Test Center, Edwards Air Force Base, California, clearly establish the necessity for the taking. Congress delegated to the Secretary of the Air Force the power to determine the necessity for the taking in the instant case. He made such determination. This Court has no power to re-determine the question. (U.S. v. Welch, 327 U.S. 546; 90 L. Ed. 945; [178] City of Oakland v. U.S., 124 Fed. 2d 595, cert. den. 316 U.S. 679; U.S. v. 277.97 Acres of Land, 112 Fed. Supp. 159.)

4. There was deposited in the Registry of the Court at the time of the Declaration of Taking, the sum of $205,000.00. Defendants contend that this estimate was a mere nominal sum and that the amount of such deposit shows bad faith and arbitrary and capricious action. At the time the Declaration of Taking assembly was submitted to and approved by the Secretary of the Air Force he had before him an appraisal of the subject property prepared by an experienced qualified contract appraiser who had determined the fair market value to be $205,000.00. The Secretary had no other or contrary appraisals and his estimate of the just compensation required by statute which he caused to be deposited in the Registry of the Court is the sum of $205,000.00, the full amount of the contract appraisal. We have here simply a disagreement as to the fair

market value of the property. No convincing evidence was introduced that the deposit was inadequate. Nothing appears in the record to suggest that the Secretary of the Air Force acted in bad faith or in an arbitrary and capricious manner. However, even if the deposit were inadequate, more inadequacy will not support the pending motions. (U.S. v. 48,752.77 Acres of Land, 55 Fed. Supp. 563.)

5. Defendants contend that much land was condemned or purchased by the Government under threat of condemnation, and existing establishments were put out of business. In lieu thereof it is alleged a "Monopoly Town" was created under the Wherry Housing Act. Title VIII was added to the National Housing Act by Public Law 211, 81st Congress, 12 U.S.C.A. section 1748, and is commonly referred to as the Wherry Housing Act. As shown by the affidavit of Lt. Col. [179] Robert T. Foley, USAF Base Commander, Edwards Air Force Base, Edwards, California, a need for such housing at the Base was occasioned by the fact that the Base was located at an extremely remote site in the Mojave Desert, where no adequate private rental housing nor supporting community facilities were available. This created a morale problem, discouraged reenlistments and caused unrest and dissatisfaction among the Base personnel.

The Secretary of the Air Force determined that lease would effectuate the purposes of the Wherry Housing Act and leases were entered into with the sponsor corporations, the Edwards Base Housing Corporation and the Muroc Housing Corporation,

for the erection of housing units and community facilities. Space in the community facilities is leased by the sponsor corporations to the individual leasing tenants who operate the type of establishments usually found in a shopping center. The result has been what the defendants call a "Monopoly Town" in lieu of the businesses formerly conducted by individual land owners whose property was either condemned or purchased by the Government.

The wisdom of legislation such as the Wherry Housing Act rests with Congress and not with the Courts. The Secretary of the Air Force made his determination and entered into leases under the authority granted by Congress. The Court cannot substitute its judgment for the judgment of the Secretary.

6. With respect to the claim that the Declaration of Taking was a fraudulent, manufactured or forged document, the Court is satisfied from the evidence that the document was not fraudulent, manufactured or forged. The complete files on this matter were received in evidence. In December of 1952 there was pending and undetermined in this Court an action [180] entitled "U.S. v. 1710.3 Acres of Land in the County of Kern, etc. No. 1201-ND". By letter dated February 3, 1953, from E. V. Huggins, Assistant Secretary of the Air Force, to the Attorney General it was requested that the above mentioned action be amended by including therein the property of these defendants. It was determined by the Attorney General that it would be better to acquire the defendants' property by a separate and

independent action rather than by way of amendment to the above mentioned action. This was done with the approval and ratification of the Assistant Secretary of the Air Force. The Secretary of the Air Force determined that the land in question would be condemned. The Attorney General determined the manner of its acquisition. (U.S. vs. California, 332 U.S. 19; U.S. vs. San Jacinto Tin Co., 125 U.S. 273; Clark vs. U.S., 155 Fed. 2d 157.)

Defendants also complain that priorities of taking were changed without authority. Priorities may be changed by the same authority that established them.

The subject matter of the sixth ground is covered by the affidavits of Richard A. Lavine, Assistant United States Attorney, assigned to the Lands Division of the United States Attorney's Office for the Southern District of California; the affidavit of August Weymann, a Special Attorney in the Lands Division, Department of Justice, who was in charge of the proceedings from December, 1952 to and including February 28, 1955; the testimony of William M. Curran, Jr., Attorney for the Corps of Engineers, United States Army, stationed in Los Angeles, California, and the affidavit of defendant Pancho Barnes, aka Florence Lowe Barnes McKendry. The Declaration of Taking in question was and is a valid document and is neither forged, manufactured nor fraudulent. [181]

The motions of the defendants to dismiss the complaint to set aside the Declaration of Taking and to vacate and set aside the ex parte judgment

entered thereon are and each of them is denied. The defendants are granted thirty days from date in which to file their answers to the complaint, if they desire to do so.

The Clerk of this Court is directed to mail copies of this order to the defendants and to counsel for the plaintiff.

Dated: October 14, 1955.

/s/ GILBERT H. JERTBERG,
Judge, U. S. District Court. [182]

[Endorsed]: Filed Oct. 17, 1955.

[Title of District Court and Cause No. 1253-ND.]

MOTION TO STRIKE PORTIONS OF ANSWER OF PANCHO BARNES; MOTION TO STRIKE PORTIONS OF ANSWER OF PANCHO BARNES, E. S. McKENDRY, AND WILLIAM EMMERT BARNES; NOTICE OF MOTIONS

Motion to Strike Portions of Answer of Defendant Pancho Barnes.

Comes now the plaintiff, United States of America, by Laughlin E. Waters, United States Attorney, and Joseph F. McPherson and Richard A. Lavine, Assistant United States Attorneys, and moves the court for an order to strike the following portions of the answer of defendant Pancho Barnes:

Commencing on line 23, page 1, with the words: "That the government appraiser * * *" to and in-

cluding the words "For defendants costs of suit" on page 2, line 13.

The grounds of said motion are as follows:

1. The material which plaintiff has moved to be stricken does not present any legal defense or defenses to the condemnation action, and is irrelevant to this action.

2. Said material has been included substantially by way of [183] allegation or evidence produced in support of previous motions to dismiss and to set aside the declaration of taking. The Orders on Motion to Dismiss the Complaint and Motion to Set Aside the Declaration of Taking and to Vacate and Set Aside the ex Parte Judgment Entered Thereon, filed October 17, 1955, are the law of the case and are determinative of said issues.

3. The declaration of taking shows on its face that the taking is for a military and public purpose.

4. This court has judicial knowledge that the use of the property taken is for the expansion of Edwards Air Force Base, and that such is a public and military purpose.

5. This court has no power to review the necessity of the taking, the quality of the estate taken, the extent of the taking, or the particular tracts to be taken, which are matters that have been delegated by Congress to the discretion of the Secretary of the Air Force.

6. The defendant and defendants seek to impose conditions upon the taking of such property by the United States, and this court has no jurisdiction or authority to impose conditions upon the taking of

property for the purpose of condemnation as provided by statute.

This motion will be based upon the files and documents on file in this action, and the moving papers.

Motion to Strike Portions of Answer of Defendants Pancho Barnes, E. S. McKendry and William Emmert Barnes.

Comes now the plaintiff, United States of America, by Laughlin E. Waters, United States Attorney, and Joseph F. McPherson and Richard A. Lavine, Assistant United States Attorneys, and moves the court for an order to strike the following portions of the answer of defendants Pancho Barnes, E. S. McKendry and William Emmert Barnes: [184]

1. All of Paragraph 1 on page 1 thereof.

2. All of Paragraph II on page 1 thereof.

3. All of Paragraph III on page 1 thereof.

4. Commencing with the First Defense on page 2, line 7, to and including the words "3. That if said lands be condemned", on page 5, line 15.

5. Commencing with the words "* * * including severance damages * * *" on page 5, line 17, to and including the words "For defendants' cost of suit", on page 5, line 23.

The ground of said motion are as follows:

1. Plaintiff refers to the six grounds set forth in the Motion to Strike Portions of Answer of Defendant Pancho Barnes, supra, and incorporates same by reference.

2. The Seventh and Eighth Defenses are frivolous and without merit or substance in that the Sections 257 and 258a have repeatedly been ruled to be constitutional.

This motion will be based upon the files and documents on file in this action, and the moving papers.

Notice of Motions

To defendants Pancho Barnes, E. S. McKendry, and William Emmert Barnes:

You and Each of You will please take notice that at 10:00 a.m. on Monday, December 5, 1955, before the Honorable Gilbert H. Jertberg, Judge of the above entitled court, in the United States Post Office and Court House at Fresno, California, located at 2309 Tulare Street, plaintiff will move to strike the said portions of the answer of defendant Pancho Barnes, and the answer of defendants Pancho Barnes, E. S. McKendry, and William Emmert Barnes.

Dated: This 17th day of November, 1955.

LAUGHLIN E. WATERS,
United States Attorney,

RICHARD A. LAVINE,
Assistant U. S. Attorney,

/s/ By RICHARD A. LAVINE
Attorneys for Plaintiff. [185]

Affidavit of Service by Mail Attached.

[Endorsed]: Filed Nov. 18, 1955.

[Title of District Court and Cause No. 1253-ND.]

AMENDED ANSWER

In answer to plaintiff's complaint, defendants Pancho Barnes, E. S. McKendry and William Emmert Barnes, admits, denies and alleges:

I.

The defendants deny generally and specifically all the allegations contained in Paragraph II.

II.

The defendants deny generally and specifically all the allegations contained in Paragraph III.

III.

The defendants admit that the estate taken is the fee simple title, subject to existing easements for public roads and highways, public utilities, railroads and pipe lines, Except as specifically admitted, defendants deny each and every one of the remaining allegations of Paragraph IV.

IV. [194]

Defendants admit the allegations of Paragraph V.

V.

Answering the allegations of Paragraph VI, defendants admit that the names of the owners of the said land are as follows:

Tract L-2040: E. S. McKendry; Florence Lowe Barnes McKendry.

Tract L-2043: William Emmert Barnes; Florence Lowe Barnes McKendry.

Tract L-2071: E. S. McKendry; aka E. S. McKendry and Florence Lowe Barnes McKendry.

Tract L-2072: E. S. McKendry; Florence Lowe Barnes McKendry.

Except as expressly admitted defendants deny generally and specifically each and every one of the remaining allegations of said paragraph.

Pancho Barnes is the leasee of the subject property. Said lease was in effect since 1942, an additional lease was written in 1951 because of an additional owner E. S. McKendry and is now current and will be until 1976.

First Defense

That the Secretary of the Air Force and or the Assistant Secretary of the Air Force did act in bad faith, was arbitrary, capricious, without adequate determining principle, or was unreasoned in requesting that the Attorney General of the United States begin condemnation proceedings on the subject land for the following reasons; That Public Law 564 is the only public law which pertains to the taking of specific property in this complaint, and according to the Congressional Committee meetings which it was necessary to study to determine the ambiguous phraseology of Public Law 564 which referred only to "land for base expansion". Congress was exact and definite as to the land, and as to the character of the land and its location included in Public Law 564. The subject land was not [195]

included within this public law. The suit was improperly initiated and was made in bad faith.

Second Defense

That the so-called Declaration of Taking was a fraudulent, manufactured or forged document. The Declaration of Taking No. 2 subsequently made over from Case No. 1201 ND to Case 1253 ND was manufactured prior to any authorizing power to make same and was not made for the subject property. The above referred to Declaration of Taking No. 2 was made over after it was signed by Assistant Secretary E. V. Huggins with no authority from the signer and is a forged document. The land was taken without due process of law as guaranteed by the V Amendment of the Constitution.

Third Defense

It is alleged by the Department of Justice that the Assistant Secretary of the Air Force Huggins stated that the property was necessary for "Construction purposes", whereas said property was not needed for construction purposes, was not needed for public use and was taken in bad faith.

Fourth Defense

The estimate of "just" compensation was made in bad faith and was so inadequate that it is a mere token compliance with the statute. The Appraiser Mr. Bernard Evans refused to consider many of the assets of the property or the best use thereof. Thereby depriving the defendants of their rights under the V Amendment.

Fifth Defense

The owners and leasee of the property were subjected to abuse and discrimination by the Air Force. The local Commander, General J. S. Holtoner did threaten to bomb them and acted or thought he acted in the interest of the Air Force. An arson fire destroyed five buildings on the ranch. Business fell off sharply under his efforts and defendant Pancho Barnes was shot at on several occasions. Lt. Col. Sacks, the local base legal officer, also threatened to [196] bomb the defendants. The Federal Bureau of Investigation, under direction of the Air Force called on clients of the ranch, contacting them all over the country and Alaska inquiring as to the morals of the place (which were above reproach) to the detriment of the business. The owners and leasee were discriminated against as they were shoved off their place while others closer to the base were allowed to continue operations. The business of the local people including defendants and leases were made to cease and their property seized while other private individuals were given their business under lease on Air Base property. Thereby depriving defendants of their rights under the V Amendment.

Sixth Defense

That officers of the Air Force have used false and manufactured documents and have perjured themselves during hearings heretobefore held in this case, thereby depriving the defendants of their rights under the V Amendment of the Constitution.

Seventh Defense

Defendants allege that the oil, petroleum, hydrocarbons and minerals including gold lying under the land described in the complaint, are not to be used for extending said Air Force Base or for any other military or public purpose or use.

Wherefore, defendants pray judgment as follows:

1. That their interest in said land be not condemned and that the plaintiff take nothing by its complaint, and that the property be restored to its rightful owners and leasee intact, and in the same condition as of the day of taking, February 27, 1953, together with payment of all damages as suffered by the defendants.

2. That if said lands are condemned, that the oil, petroleum, hydrocarbons and minerals lying thereunder be excepted.

3. That if said lands be condemned, just compensation for the taking thereof be awarded including all damages to oil and mineral rights including severance damages if the mineral rights [197] are retained by defendants.

4. For defendant's costs of suit and such other and further relief as to the Court may seem just and proper.

Dated: December 4, 1955.

/s/ PANCHO BARNES,
/s/ E. S. McKENDRY,
/s/ WILLIAM EMMERT BARNES,
Defendants in Propria Persona.

[Endorsed]: Filed Dec. 5, 1955.

[Title of District Court and Cause No. 1253-ND.]

ORDER GRANTING PLAINTIFF'S MOTION STRIKING PORTIONS OF DEFENDANTS' ORIGINAL ANSWERS; GRANTING DEFENDANTS' LEAVE TO FILE PROFFERED AMENDED ANSWER WITH PORTIONS THEREOF STRICKEN

This cause came on to be heard before the Honorable Gilbert H. Jertberg, United States District Judge, at Fresno, California, on December 5, 1955 on plaintiff's motion to strike portions of defendants' answers filed herein on November 14, 1955, and the defendants Pancho Barnes, E. S. McKendry, and William Emmert Barnes then and there proffered a proposed amended joint answer realleging and reasserting defenses heretofore ruled adversely to said defendants, and the court having heard argument thereon and being fully advised in the premises,

It Is Adjudged, Ordered and Decreed:

I.

Plaintiff's motion to strike certain portions of the answer of defendant Pancho Barnes, filed November 14, 1955, is granted, and the following portions are stricken from said answer:

Commencing on line 23, page 1, with the words, "That the [201] government appraiser * * *", to and including the words, "For defendants' costs of suit", on page 2, line 13.

II.

Plaintiff's motion to strike certain portions of the answer of defendants Pancho Barnes, E. S. McKendry, and William Emmert Barnes, filed November 14, 1955, is granted, and the following portions are stricken from said answer:

a. All of Paragraph 1 on page 1 thereof.

b. All of Paragraph II on page 1 thereof.

c. All of Paragraph III on page 1 thereof.

d. Commencing with the First Defense on page 2, line 7, to and including the words, "3. That if said lands be condemned," on page 5, line 15.

e. Commencing with the words, "* * * including severance damages * * *", on page 5, line 17, to and including the words, "For defendants' costs of suit," on page 5, line 23.

III.

The proposed answer of defendants Pancho Barnes, E. S. McKendry and William Emmert Barnes may be filed, except that the court of its own motion strikes the following portions of said proposed answer:

a. All of Paragraph I on page 1 thereof.

b. All of Paragraph II on page 1 thereof.

c. Commencing with the First Defense on page 2, line 20, to and including the words, "* * * or public purpose or use," on page 4, line 21 thereof.

d. All of prayer numbered 2, on page 4, lines 28 and 29 thereof.

e. That portion of prayer numbered 4, on page 5, line 2 thereof, reading as follows: "For defendant's costs of suit." [202]

Dated: This 21st day of December, 1955.

/s/ GILBERT H. JERTBERG,
United States District Judge.

Presented by:

LAUGHLIN E. WATERS,
United States Attorney,

JOSEPH F. McPHERSON,
RICHARD A. LAVINE,
Assistant United States Attorneys,

By RICHARD A. LAVINE,

Attorneys for Plaintiff. [203]

Affidavit of Service by Mail Attached. [204]

[Endorsed]: Filed Dec. 21, 1955.

United States District Court, Southern District of California, Northern Division

No. 1253-ND Civil

UNITED STATES OF AMERICA, Plaintiff,

vs.

360 ACRES OF LAND, MORE OR LESS, IN THE COUNTY OF KERN, STATE OF CALIFORNIA; E. S. McKENDRY, et al., Defendants.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL JUDGMENT IN CONDEMNATION (AS TO TRACTS Nos. L-2040, L-2043, L-2071, AND L-2072)

The above-entitled eminent domain proceeding came on regularly for trial in this court on June 5, 1956, before the Honorable Gilbert H. Jertberg, United States District Judge, and a jury of twelve duly qualified persons, empaneled and sworn to try the issue of just compensation for the taking and condemnation by the plaintiff of the lands and estates therein more particularly described in the Complaint in Condemnation and in the Declaration of Taking filed herein, which for convenience were designated as Tracts Nos. L-2040, L-2043, L-2071, and L-2072, comprising in the aggregate 368 acres, more or less, lying and being in the County of Kern, State of California.

Plaintiff appeared by its attorneys of record, Laughlin E. Waters, United States Attorney, and Joseph F. McPherson and Albert N. Minton, Assistant U. S. Attorneys, and the defendants [205] Florence Lowe Barnes McKendry, also known as Pancho Barnes, and Pancho Barnes, doing business as Rancho Oro Verde, E. S. McKendry, and William Emmert Barnes appeared by their attorneys, Beardsley, Hufstedler & Kemble.

Due and lawful service of process was made upon the defendants Benjamin C. Hannam and Kathryn May Hannam, Desert Aero, Inc., Peter Thomas, State of California, and County of Kern. Neither Benjamin C. Hannam, Kathryn May Hannam, nor Desert Aero, Inc., appeared in said proceeding or at the aforesaid trial.

Witnesses on the part of plaintiff and defendants were sworn in the case and evidence, both oral and documentary, was introduced upon the issue of just compensation.

The matter was argued by counsel for the respective parties, and the jury instructed by the court; thereupon the jury retired, deliberated, and subsequently returned into court and rendered the following verdict:

"We, the jury, find the just compensation for the taking and condemnation of the property described in plaintiff's complaint and declaration of taking on file herein and designated as Tracts Nos. L-2040, L-2043, L-2071 and L-2072, to be the sum of $377,000.00.

"Dated: The 23rd day of June, 1956.
Roy H. Gerard,
Foreman."

The court, upon the pleadings, the record herein, the evidence, and verdict of the jury, and good cause appearing therefor, makes and files the following

Findings of Fact

This proceeding was duly and regularly commenced by the plaintiff on February 27, 1953, by the filing of its Complaint in Condemnation and Declaration of Taking herein to acquire the title and estates in and to the property therein more particularly [206] described, and for convenience designated as Tracts Nos. L-2040, L-2043, L-2071, and L-2072, and simultaneously deposited into the registry of this court the following sums for the use and benefit of the parties entitled thereto for the taking and condemnation of said properties:

Tract Number	Amount on Deposit
L-2040	$ 33,500.00
L.2043	29,000.00
L-2071	2,000.00
L-2072	140,500.00
	$205,000.00

The record title to Tracts Nos. L-2040 and L-2072 stood in the name of E. S. McKendry. Record title to Tract No. L-2043 stood in the name of William Emmert Barnes. Tract No. L-2071, a 40-acre tract

lying immediately south of Tract No. L-2040, was acquired by the defendant Florence Lowe Barnes McKendry, also known as Pancho Barnes, by purchase from the defendants Benjamin C. Hannam and Kathryn May Hannam at the same time she purchased Tract No. L-2040 from them. By inadvertence the conveyance failed to describe Tract No. L-2071, and a corrective deed conveying said property to the said defendant Florence Lowe Barnes McKendry, also known as Pancho Barnes, was executed and delivered but has been lost or destroyed. The defendants Florence Lowe Barnes McKendry, also known as Pancho Barnes, and E. S. McKendry have been in continuous and uninterrupted open, notorious and adverse possession of said Tract No. L-2071 for more than 25 years preceding the filing of the Declaration of Taking herein, and the defendant E. S. McKendry was then the true and lawful owner thereof. During all of such period of adverse possession of said Tract No. L-2071, the defendants Pancho Barnes and E. S. McKendry paid all real property taxes assessed upon said property.

The aforesaid tracts were unitized in use and were valued [207] as of February 27, 1953, and as though in a single ownership.

The State of California and the County of Kern appeared herein and asserted certain liens for taxes, and under the State Unemployment Insurance Act, which are provided for in orders heretofore made herein and by this final judgment.

The defendant Peter Thomas appeared herein

and asserted a valid and subsisting judgment lien. The judgment was entered in Case No. 1232, Justice Court, Mojave Judicial District, Kern County, California, on March 15, 1952, against Florence L. Barnes in the amount of $45.75, which must and will be paid and discharged from and out of the registry deposits.

The balance of the mortgage lien held by the Farmers and Merchants Trust Company of Long Beach, as trustee, created by trust deed dated January 30, 1950, by William Emmert Barnes, a single man, to secure an indebtedness to Farmers and Merchants Bank of Long Beach, in the original principal amount of $13,000.00, recorded April 7, 1950, in Book 1558 at Page 371 of the Official Records of Kern County, California, has been fully paid and discharged from and out of the registry deposits herein and has been canceled and released of record.

The defendant Layne & Bowler Corporation's interest was limited to certain personal property, as the vendor under the conditional sales contract recorded in Book 1801 at Page 531 of the Official Records of Kern County, California. The personal property covered and affected thereby was not taken or condemned. Layne & Bowler Corporation, having disclaimed, is not entitled to any compensation for the condemnation herein.

The defendants Benjamin C. Hannam and Kathryn May Hannam and Desert Aero, Inc., did not hold or own any interest of any kind, character or description in any or either of the properties con-

emned herein at the time of the taking and con-
emnation thereof, and are not entitled to any part
f the compensation payable therefor. [208]

On July 25, 1956, plaintiff United States of
merica made a supplemental deposit in the regis-
ry of this court in this case in the amount of
112,500.00.

That on August 27, 1953, plaintiff moved for the
ntry of an order of possession of the properties
ondemned herein; the defendants resisted said ap-
lication and contested the plaintiff's right to con-
lemn the properties and the validity of the pro-
eedings. By order dated March 19, 1954, the Court
rdered that the defendants surrender possession of
he premises to the plaintiff at 12:00 o'clock noon
n May 22, 1954. On the 28th day of April, 1954,
lefendants moved for the entry of an order to mod-
fy said order of possession. By order filed June 7,
954, the Court extended the date of surrender of
possession to the plaintiff from May 22, 1954 to
July 24, 1954. By stipulation and agreement of the
parties the time of surrender of possession was
extended to August 7, 1954. Plaintiff was granted
possession of the properties, effective as of 5:00
p.m. August 7, 1954. Said orders contained no con-
ditions or provisions requiring the payment of rent
notwithstanding the insistence of plaintiff that said
orders contain some provision obligating the de-
fendants to pay rent during the period of posses-
sion. Testimony was taken upon the matters set
forth in this paragraph on September 9, October 27
and 28, 1953, February 23 and 24, 1954, and May

10, 1954. The defendants' several motions attacking the validity of the proceedings and plaintiff's right to condemn were denied.

During the period after the filing of the Declaration of Taking and before the defendants surrendered possession of the premises and on, to wit, November 14, 1953, two of the structures on the property, to wit, the dance hall and defendants' residence, were destroyed by fire. They were, however, included in the valuation as of February 27, 1953.

Certain of the plumbing fixtures, doors, heaters, air [209] conditioners, pumps, and motors which were upon and attached to the property on February 27, 1953, and which were also included in the valuation as of that date, were claimed missing at the time of the surrender of possession by defendants.

On May 31, 1956, after argument of counsel of record for plaintiff and for the defendants Florence Lowe Barnes McKendry, also known as Pancho Barnes, E. S. McKendry, and William Emmert Barnes, a pretrial order was made and entered herein which, among other things, provided:

"That upon the trial of this case, to commence on June 5, 1956, before the court and a jury to be selected, the sole and only issue to be submitted to the jury for determination is the fair market value, as of February 27, 1953, of the real property taken and condemned herein, a more particular description of which is set forth in the Complaint and Declaration of Taking filed herein on February 27, 1953.

"At a date to be fixed by the court following the trial hereinabove mentioned, the court, without a jury, will hear and determine the amount, if any, by which the fair market value, as determined by the jury, shall be reduced as a result and by reason of:

"(a) the destruction of one or more of the improvements on the property after the filing of the Declaration of Taking herein and before the defendants surrendered possession thereof;

"(b) the removal from the property condemned of certain fixtures which were in place and part of the property condemned, and which were removed after the filing herein of the Declaration of Taking and before the surrender of possession by the defendants;

"(c) the fair market rental value of the use and [210] occupancy by the defendants from and after the filing herein of the Declaration of Taking to and until August 7, 1954, the date of the surrender of possession.

"At the court hearing upon the collateral issues, 4(a), (b) and (c) above referred to, the court will also determine whether and how much interest shall be allowed on any deficiency which may be established by the verdict as to any or either of the parcels condemned, having particular reference to the title impediments and defects presently existent thereon."

After the trial to the jury of the issue of just compensation, that is to say, the fair market value as of February 27, 1953, of the real property taken and condemned herein, and on, to wit, July 25, 1956

and August 1, 1956, the court, having heard and considered the argument of counsel of record for the plaintiff and for the defendants Florence Lowe Barnes McKendry, also known as Pancho Barnes, E. S. McKendry, and William Emmert Barnes, made and entered herein an order which, among other things, provided:

"That this court is without power or jurisdiction to hear and determine the matters set forth in subparagraphs (a) and (b) of paragraph 4 of the Pretrial Order filed and entered herein on May 31, 1956, as follows, to wit:

" 'The amount, if any, by which the fair market value, as determined by the jury, shall be reduced as a result and by reason of:

" '(a) the destruction of one or more of the improvements on the property after the filing of the Declaration of Taking herein and before the defendants surrendered possession thereof;

" '(b) the removal from the property condemned of certain fixtures which were in place and part [211] of the property condemned, and which were removed after the filing herein of the Declaration of Taking and before the surrender of possession by the defendants.' "

Thereafter and on, to wit, September 18, 1956, the Court without a jury heard testimony as to the fair market rental value of the use and occupancy of the premises on and after the filing of the Declaration of Taking herein, to and including August 7, 1954, the date of surrender of possession by the defendants, and certain title questions concerning Tract

No. L-2071; that on September 26, 1956, the Court made and entered herein an order which, among other things, provided:

"It is my view that I cannot at this late date, which is more than two years from the surrender of possession by the defendants to the plaintiff, enter any such order. In my opinion, I am precluded from so doing by the hearings held before Judge Beaumont and the orders made by him in relation thereto.

"It is therefore determined that the fair market value of the premises in question as determined by the jury shall not be reduced as a result or by reason of the fair market rental value, if any, of the use and occupancy by the defendants of the premises in question from and after the filing of the declaration of taking."

Heretofore and during the progres of this proceeding there has been distributed to or for the account of the defendants Florence Lowe Barnes McKendry, also known as Pancho Barnes, E. S. McKendry, and William Emmert Barnes, the following sums:

Date	Amount Distributed
3/12/53	$185,000.00
4/6/53	9,402.73
8/29/55	1,900.00 [212]
11/6/55	733.07
9/18/56	112,500.00
	$309,535.80

Based upon the preceding Findings of Fact, the court makes the following

Conclusions of Law

At the time of filing the Declaration of Taking herein on February 27, 1953, with the accompanying deposit, fee simple title to the property therein more particularly described and for convenience designated as Tracts Nos. L-2040, L-2043, L-2071, and L-2072, subject, however, to existing easements for public roads and highways, public utilities, railroads and pipe lines, vested in the plaintiff United States of America.

The uses and purposes for which the plaintiff acquired said tracts are public uses and are authorized by law.

At the time of the filing of said Declaration of Taking on February 27, 1953, the right to just compensation for the taking and condemnation of said properties vested in the defendants Florence Lowe Barnes McKendry, also known as Pancho Barnes, E. S. McKendry, and William Emmert Barnes.

That just compensation for the taking and condemnation of the properties and estates therein described in the Declaration of Taking and for convenience designated as Tracts Nos. L-2040, L-2043, L-2071, and L-2072, is the sum of $377,500.00, together with interest at the rate of 6% per annum on the sum of $172,500.00 from February 27, 1953, to and until July 25, 1956, upon which date the plaintiff deposited into the registry of this court the further sum of $112,500.00, and interest at the rate

of 6% per annum upon the sum of $60,000.00 from July 25, 1956, until paid into the registry of this court.

That the plaintiff, United States of America, is not entitled to a reduction in amount or abatement of the fair market [213] value of the properties taken and condemned herein as a result or by reason of:

(a) The destruction of one or more of the improvements on the property after the filing of the Declaration of Taking herein and before the defendants surrendered possession thereof;

(b) The claimed removal from the property condemned of certain fixtures which were in place and a part of the property condemned, and which were missing after the filing of the Declaration of Taking and before the surrender of the property by defendants;

(c) The fair market rental value of the use and occupancy by the defendants of the property condemned from and after the filing herein of the Declaration of Taking, to and including August 7, 1954, the date of surrender of possession of the property by the defendants.

The defendants Florence Lowe Barnes McKendry, also known as Pancho Barnes, E. S. McKendry, and William Emmert Barnes are entitled to interest at the rate of 6% per annum upon the deficiency created by the aforesaid verdict.

That neither of the defendants Desert Aero, Inc., Layne & Bowler Corporation, Farmers and Merchants Trust Company of Long Beach, Farmers and

Merchants Bank of Long Beach, Benjamin C. Hannam and Kathryn May Hannam, or any or either of them, had, or has, any interest in and to any or either of the tracts of land taken and condemned herein, and are not entitled to any part of the compensation payable for the taking and condemnation thereof.

Based upon the preceding Findings of Fact and Conclusions of Law, it is hereby

Adjudged, Ordered and Decreed:

That the plaintiff, United States of America, is entitled [214] to condemn the properties and estates therein more particularly described in the Complaint in Condemnation and Declaration of Taking filed herein, and for convenience designated as Tracts Nos. L-2040, L-2043, L-2071, and L-2072, for the public uses set forth in said Complaint and Declaration of Taking.

The just compensation for the taking and condemnation of said properties is the sum of $377,500.00, together with interest at the rate of 6% per annum on the sum of $172,500.00 from February 27, 1953, to and until July 25, 1956, upon which date the plaintiff deposited into the registry of this court the further sum of $112,500.00, and interest at the rate of 6% per annum upon the sum of $60,000.00 from July 25, 1956, until paid into the registry of this court.

Plaintiff, United States of America, is directed to deposit into the registry of this court, with respect to the taking and condemnation of said properties, the deficiency in the amount of $60,000.00, together

with interest at the rate of 6% per annum on the sum of $172,500.00 from February 27, 1953, to and until July 25, 1956, and interest at the rate of 6% per annum on the sum of $60,000.00 from and after July 25, 1956, until paid into the registry of this court.

It is further Adjudged, Ordered and Decreed that upon the payment of said deficiency with interest computed as aforesaid the clerk of this court is hereby authorized and directed to pay from and out of the registry of this court, to the defendants Florence Lowe Barnes McKendry, also known as Pancho Barnes, E. S. McKendry, and William Emmert Barnes, the balance of the funds so deposited on account of the just compensation for the taking and condemnation as aforesaid, save and except the sum of $4,753.14, which is to be held and retained in the registry pursuant to the orders of this court, entered herein on the 18th day of October, 1955, and the 21st day of October, 1955, segregating certain registry [215] funds for the purposes therein more particularly set forth, and the further sum of $45.75, together with interest thereon at the rate of 7% per annum from and after March 12, 1952, to and until the date hereof, which said sum with interest so computed shall be forthwith paid to Peter Thomas.

All taxes claimed by the County of Kern, State of California, upon and against the properties taken and condemned herein have been fully paid and discharged.

It is further Adjudged, Ordered and Decreed that plaintiff's claims for the reduction or abatement of

the fair market value of the properties taken and condemned herein, as determined by the jury, as a result and by reason of (a) the destruction of one or more of the improvements on the property after the filing of the Declaration of Taking herein and before the defendants surrendered possession thereof; (b) the removal from the property condemned of certain fixtures which were in place and part of the property condemned, and which were removed after the filing herein of the Declaration of Taking and before the surrender of possession by the defendants; and (c) the fair market rental value of the use and occupancy by the defendants from and after the filing herein of the Declaration of Taking to and until August 7, 1954, the date of the surrender of possession, be, and each of same are, hereby denied.

Dated: This 8th day of November, 1956.

/s/ GILBERT H. JERTBERG,
United States District Judge.

Presented by: Laughlin E. Waters, United States Attorney, Joseph F. McPherson, Albert N. Minton, Assistant U. S. Attorneys, by Joseph F. McPherson, Attorneys for Plaintiff, United States of America.

Approved as to form: Beardsley, Hufstedler & Kemble, by Seth M. Hufstedler, Attorneys for Defendants Florence Lowe Barnes McKendry, also known as Pancho Barnes, E. S. McKendry, and William Emmert Barnes. [216]

[Endorsed]: Lodged Nov. 1, 1956. Filed Nov. 8, 1956. Docketed and Entered No. 13, 1956.

[Title of District Court and Cause No. 1253-ND.]

MOTION FOR NEW TRIAL

Defendants E. S. McKendry, Florence Lowe Barnes, also known as Florence Lowe Barnes McKendry, and William Emmert Barnes, move this Court to set aside the verdict and judgment herein, and to grant a new trial of the issue of the just compensation to be awarded to said defendants for the real property involved herein, upon the following grounds:

1. Errors in law occurring at the trial;

2. Insufficiency of the evidence to justify the verdict.

Such motion will be based upon this Motion for New Trial, and the Points and Authorities submitted herewith, and upon the evidence received and excluded during the trial of the above-entitled matter before the Jury, and the rulings of Court thereon; and the written offer of proof filed by defendants regarding the offer to purchase the real property in question by one Tommy Lee.

The particular errors relied upon are specified as follows: [217]

1. The ruling of the Court in refusing to admit evidence of prior offers to purchase the real property in question, and in particular, the refusal to receive evidence of the offer to purchase by Tommy Lee, and the circumstances surrounding said offer.

2. The ruling of the Court excluding evidence offered from the witness Hugh McNulty, regarding the costs of construction of certain improvements in accordance with specifications submitted.

3. The ruling of the Court admitting as evidence information regarding the sales of other real property near to the property involved, as "comparable sales", by the government experts on evaluation. This specification is based upon the argument that such sales were not "comparable sales".

Defendants contend that the evidence was insufficient to justify the verdict in this action in that the evidence of value of the property submitted by witnesses by the plaintiff was based upon "comparable sales", which, in fact, were not comparable. Without consideration of such evidence, the evidence was insufficient to justify the award actually made.

Dated: November 23, 1956.

BEARDSLEY, HUFSTEDLER
& KEMBLE,

/s/ By SETH M. HUFSTEDLER,
Attorneys for defendants, E. S. McKendry, Florence Lowe Barnes, also known as Florence Lowe Barnes McKendry, and William Emmert Barnes. [218]

Acknowledgment of Receipt of Copy Attached. [219]

[Endorsed]: Filed Nov. 23, 1956.

[Title of District Court and Cause No. 1253-ND.]

AMENDMENT OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL JUDGMENT IN CONDEMNATION (As to Tracts Nos. L-2040, L-2043, L-2071, and L-2072)

An inspection of the records of this court discloses that an error in computation was made in the disbursement portion of the Findings of Fact, Conclusions of Law, and Final Judgment in Condemnation, filed herein on November 8, 1956, docketed and entered November 13, 1956, and, in order to make said Findings of Fact, Conclusions of Law, and Final Judgment in Condemnation speak the truth concerning the orders therein referred to, entered October 18, 1955, and October 21, 1955, the court, of its own motion, amends said Findings of Fact, Conclusions of Law, and Final Judgment in Condemnation, by deleting from Line 29, on Page 11 thereof, the figure "$4,753.14," and substituting in place and in lieu thereof the figure "$5,964.20."

Done and Ordered at Los Angeles, California, this 10th day of December, 1956.

/s/ GILBERT H. JERTBERG,
United States District Judge. [199]

Presented by: Laughlin E. Waters, United States Attorney, Joseph F. McPherson, Assistant U. S. Attorney, by Joseph F. McPherson, Attorneys for Plaintiff.

Approved: Beardsley, Hufstedler & Kemble, by

Seth M. Hufstedler, Attorneys for Defendants Florence Lowe Barnes McKendry, also known as Pancho Barnes, E. S. McKendry, and William Emmert Barnes. [200]

Docketed and Entered Dec. 14, 1956.

[Endorsed]: Filed Dec. 10, 1956.

[Title of District Court and Cause No. 1253-ND.]

ORDER DENYING MOTION FOR NEW TRIAL

The motion of defendants, E. S. McKendry, Florence Lowe Barnes, also known as Florence Lowe Barnes McKendry, and William Emmert Barnes to set aside the verdict and judgment herein and to grant a new trial of the issue of the just compensation to be awarded said defendants for the real property involved herein, came on for hearing before the Court on December 10, 1956. The plaintiff was represented by Laughlin E. Waters, United States Attorney, Joseph F. McPherson and Albert N. Minton, Assistant United States Attorneys, Joseph F. McPherson appearing, and the defendants were represented by Beardsley, Hufstedler and Kemble, Seth M. Hufstedler appearing. The matter was orally argued by Mr. Hufstedler and Mr. McPherson, and the motion was submitted to the Court for its decision. [220]

I have considered the oral arguments presented at the hearing and the legal memoranda theretofore

filed and I have carefully reviewed the record. I am convinced that the verdict of the jury in this case constituted just compensation and that the evidence is amply sufficient to justify the verdict. I am likewise convinced that no errors in law occurred during the trial of the action which would justify setting aside the verdict and judgment herein or the granting of a new trial. It is my view that none of the alleged errors of law occurring during the trial affected the substantial rights of the defendants, or that the verdict is inconsistent with substantial justice.

The motion of the defendants to set aside the verdict and judgment and to grant a new trial is therefore denied.

The Clerk of this Court is directed to forthwith mail copies of this order to all counsel.

Dated: December 13, 1956.

/s/ GILBERT H. JERTBERG,
Judge, U. S. District Court. [221]

Docketed and Entered Dec. 17, 1956.

[Endorsed]: Filed Dec. 13, 1956.

[Title of District Court and Cause No. 1253-ND.]

NOTICE OF APPEAL TO COURT OF APPEALS UNDER RULE 73(B)

Notice Is Hereby Given that E. S. McKendry, Florence Lowe Barnes, also known as Pancho Barnes, and William Emmert Barnes, defendants

above named, hereby appeal to the United States Court of Appeals for the Ninth Circuit from that judgment entered in the above-entitled action on November 13, 1956, and in particular from that paragraph thereof beginning at page 10, line 32, and ending at page 11, line 5, which provides as follows:

"That the plaintiff, United States of America, is entitled to condemn the properties and estates therein more particularly described in the Complaint in Condemnation and Declaration of Taking filed herein, and for convenience designated as Tracts Nos. L-2040, L-2043, L-2071, and L-2072, for the public uses set forth in said Complaint and Declaration of Taking."

In addition thereto, the said defendants hereby appeal from the following specified orders of said court, in the above-entitled [222] Proceeding, insofar as said orders may have any force or effect:

1. The order docketed and entered on March 23, 1954, denying defendants' motion to set aside the Declaration of Taking and vacate and set aside the ex parte judgment dated March 2, 1953, and denying the motion by defendants to dismiss.

2. The order docketed and entered on October 17, 1955, denying the defendants' motion to set aside the Declaration of Taking and vacate and set aside the ex parte judgment entered thereon dated March 2, 1953, and denying the defendants' motion to dismiss.

Dated: February 11, 1957.

BEARDSLEY, HUFSTEDLER
& KEMBLE,
/s/ By SETH M. HUFSTEDLER,
Attorneys for E. S. McKendry, Florence Lowe Barnes, also known as Pancho Barnes, and William Emmert Barnes. [223]

[Endorsed]: Filed Feb. 11, 1957.

[Title of District Court and Cause No. 1253-ND.]

STATEMENT OF POINTS TO BE RELIED UPON ON APPEAL

Appellants have appealed from the orders of the court in the above-entitled matter dated March 22, 1954, and October 17, 1955, which overruled appellants' motion to dismiss the complaint and to set aside the declaration of taking and vacate the ex-parte judgment based thereon, and from that portion of the final judgment which, in effect, approves such orders, and affirms the right of the Government to condemn the subject property. Appellants, by this appeal, raise the right of the Government to take the subject property in the above-entitled proceeding.

The points relied upon are set forth in full in the motions denied by the above-mentioned orders. those motions were the motion to dismiss the complaint, filed September 5, 1953; the motion to set aside the declaration of taking, filed September 5, 1953; the supplemental amendments to motion to set aside declaration of taking and to vacate and set

aside ex-parte judgment, filed February 23, 1954; [224] the supplemental amendment to dismiss, filed February 23, 1954; the motion to dismiss, filed April 22, 1955; the motion to set aside the declaration of taking, dated February 27, 1953, and to vacate and set aside the ex-parte judgment entered thereon, dated March 2, 1953, which motion was filed April 22, 1955; the supplement to motion to dismiss, including more definite statement, filed June 1, 1955; and the supplement in addition to motion to set aside declaration of taking and to vacate and set aside ex-parte judgment entered thereon, filed June 1, 1955.

These points may be summarized as follows:

1. The Assistant Secretary of the Air Force and the Secretary of the Air Force acted arbitrarily and capriciously, and in bad faith in causing the within action to be instituted and in the preparation and filing of the Declaration of Taking.

2. The taking of the subject property was not authorized by Public Law 564, approved June 19, 1950, nor was it authorized by any other appropriate statute.

3. There was no necessity to take the condemned property for use in connection with Edwards Air Force Base, or for other legal use.

4. The deposit made in connection with the Declaration of Taking was inadequate, and known to be so, or should have been known to be so, by the Assistant Secretary of the Air Force at the time the Declaration of Taking was executed.

5. The Declaration of Taking and Ex-Parte Judgment entered thereon were rendered invalid by virtue of unauthorized alterations and unauthorized use of the Declaration of Taking herein.

Dated: March 20, 1957.

BEARDSLEY, HUFSTEDLER
& KEMBLE,
/s/ By SETH M. HUFSTEDLER,
Attorneys for Above Named
Defendants. [225]

Affidavit of Service by Mail Attached. [226]

[Endorsed]: Filed March 20, 1957.

[Title of District Court and Cause No. 1253-ND.]

DESIGNATION OF RECORD ON APPEAL

Come now the defendants and designate the following as the record on appeal:

1. Declaration of Taking, with attached schedule, filed February 27, 1953.

2. Complaint, filed February 27, 1953.

3. Amended Answer, filed December 5, 1955.

4. Decree on Declaration of Taking, filed March 2, 1953.

5. Motion to Strike Portions of Answer, filed November 18, 1955.

6. Order Granting Plaintiff Motion Striking

Portion of Defendants' Original Answers, and Granting Defendants Leave to File Proffered Amended Answer with Portions thereof Stricken, filed December 21, 1955.

7. Motion to Dismiss Complaint (excluding Points and Authorities) filed September 5, 1953.

8. Motion to Set Aside Declaration of Taking (excluding Points [228] and Authorities), filed September 5, 1953.

9. Supplemental Amendments to Motion to Set Aside Declaration of Taking and to Vacate and Set Aside Ex-Parte Judgment (excluding Points and Authorities), filed February 23, 1954.

10. Supplemental Amendment to Motion to Dismiss, filed February 23, 1954.

11. Memorandum of Opinion and Order, filed March 22, 1954.

12. Opinion of Court of Appeal for Ninth Circuit, Appeal No. 14,380, dated January 31, 1955.

13. Notice of Motion to Dismiss, filed April 22, 1955.

14. Motion to Dismiss, filed April 22, 1955.

15. Notice of Motion to Set Aside Declaration of Taking and To Vacate and Set Aside Ex-Parte Judgment (excluding Points and Authorities), filed April 22, 1955.

16. Motion to Set Aside Declaration of Taking and to Vacate and Set Aside the Ex-Parte Judgment entered thereon (excluding Points and Authorities), filed April 22, 1955.

17. Affidavits of Pancho Barnes and E. S. McKendry, filed April 27, 1955.

18. Supplemental Specific Information on Motion to Dismiss and To Set Aside Declaration of Taking, filed May 12, 1955.

19. Supplement to Motion to Dismiss, including more definite statement, filed June 1, 1955.

20. Supplements in addition to Motion to Set Aside Declaration of Taking and to Vacate and Set Aside Ex-Parte Judgment entered thereon, filed June 1, 1955.

21. Opposition to Motion to Dismiss and Motion to Set Aside Declaration of Taking and Judgment Thereon, filed June 13, 1955.

22. Affidavit of Richard A. Lavine, Re: File of United States Attorney's Office, with Exhibits, filed June 17, 1955.

23. Affidavit of August Weymann, filed June 17, 1955.

24. Answering Affidavit to all Affidavits Filed by Government [229] Witnesses, filed July 5, 1955.

25. Affidavit of Col. Robert P. Foley, filed June 17, 1955.

26. Affidavit of Col. Marion J. Akers, filed June 17, 1955.

27. Affidavit of Brig. Gen. Holtoner, filed June 17, 1955.

28. Order and Opinion of District Court on Motion to Dismiss the Complaint and Motion to Set Aside the Declaration of Taking and to Vacate and Set Aside the Ex-Parte Judgment thereon, filed October 17, 1955.

29. Minutes of Court dated June 6, 1955, in which Court ordered Defendants' Subpoena Duces Tecum quashed.

30. Findings of Fact and Conclusions of Law and Judgment by Honorable James Carter, in Civil No. 15403-C, dated September, 1954.

31. Deposition of Eugene S. McKendry, taken on behalf of Defendants, dated November 19, 1953.

32. Deposition of Jules F. Koch, taken on behalf of defendants, dated November 17, 1953.

33. Deposition of E. B. Hatcher, taken on behalf of defendants, dated November 19, 1953.

34. Deposition of Joseph Stanley Holtoner, taken on behalf of defendants, dated May 19, 1954.

35. Depositions of Pancho Barnes, E. S. McKendry, and William Emmert Barnes, taken by United States on May 8, 1956.

36. Reporter Transcript of the hearings before the Honorable Campbell Beaumont, on September 9, 1953; October 27, 28, 30, 1953; February 23, 24, 25, 1954; May 10, 1954.

37. Reporter Transcript of the hearings before the Honorable Gilbert H. Jertberg, held on May 2, 23, 1955; June 16, 17, 1955; December 5, 1955.

38. All exhibits introduced into evidence and all exhibits marked for identification by and on behalf of defendants in each and all of the hearings hereinabove mentioned.

39. All exhibits introduced into evidence by and on behalf of [230] the plaintiff in each and all of the hearings hereinabove mentioned.

40. Findings of Fact and Conclusions of Law and Judgment entered in ND-1253, the above entitled action, filed November 8, 1956.

41. Motion for New Trial, filed November 23, 1956.

42. Order Amending Findings of Fact, Conclusions of Law, and Judgment, filed December 10, 1956.

43. Order Denying Motion for New Trial, filed December 13, 1956.

44. Notice of Appeal filed February 11, 1957.

45. This Designation of Record on Appeal.

Dated: March 19, 1957.

BEARDSLEY, HUFSTEDLER
& KEMBLE,
/s/ By SETH M. HUFSTEDLER,
Attorneys for Above Named
Defendants. [231]

Affidavit of Service by Mail Attached. [232]

[Endorsed]: Filed March 20, 1957.

[Title of District Court and Cause No. 1253-ND.]

NOTICE

To the Above Named Defendants:

You Are Hereby Notified that a Complaint in Condemnation has been filed in the office of the Clerk of the above entitled Court, in an action to condemn an estate in fee simple in the property hereinafter described for public use for military purposes.

The authority for the taking is the Act of Congress approved February 26, 1931 (46 Stat. 1421; 40 U.S.C., Sec. 258a), and acts supplementary thereto and amendatory thereof, and under the further authority of the Act of Congress approved August 1, 1888 (25 Stat. 357; 40 U.S.C., [233] Sec. 257); and the Act of Congress approved August 18, 1890 (26 Stat. 316), as amended by the Acts of Congress approved July 2, 1917 (40 Stat. 241) and April 11, 1918 (40 Stat. 518; 50 U.S.C., Sec. 171), which acts authorize the acquisition of land for military purposes; the Act of Congress approved August 12, 1935 (49 Stat. 610, 611; 10 U.S.C., 1343a, b, and c), which Act authorized the acquisition of land for Air Force Stations and Depots; the National Security Act of 1947 approved July 28, 1947 (61 Stat. 495); the Act of Congress approved June 17, 1950 (Public Law 564, 81st Congress); and the Act of Congress approved September 6, 1950 (Public Law 759, 81st Congress), which act appropriated funds for such purposes.

You Are Further Notified that if you have any objection or defense to the taking of your property, you are required to serve upon plaintiff's attorneys at the address designated herein, within twenty (20) days after personal service of this notice upon you, exclusive of the day of service, an answer identifying the property in which you claim to have an interest, stating the nature and extent of the interest claimed and stating all your objections and defenses to the taking of your property. A failure so to serve an answer shall constitute a consent to the taking and to the authority of the Court to proceed to hear the action and to fix the just compensation and shall constitute a waiver of all defenses and objections not so presented.

You Are Further Notified that if you have no objection or defense to the taking, you may serve upon plaintiff's attorneys a notice of appearance designating the property in which you claim to be interested and thereafter you shall receive notice of all proceedings affecting the said property.

And You Are Further Notified that at the trial of the issue of just compensation, whether or not you have answered or served a notice of appearance, you may present evidence as to the amount of the compensation [234] to be paid for the property in which you have any interest and you may share in the distribution of the award of compensation.

The land herein sought to be acquired is situate in the County of Kern, State of California, according to the official plat of the survey of said land on file in the Bureau of Land Management, and for con-

venience has been divided into four (4) tracts, each of which said tracts is particularly described as follows:

Tract L-2040: West Half (W½) of the Northwest Quarter (NW¼); Northeast Quarter (NE¼) of the Northwest Quarter (NW¼); West Half (W½) of the Southeast Quarter (SE¼) of the Northwest Quarter (NW¼) of Section 20, Township 9 North, Range 10 West, S.B.B. & M.

Tract L-2043: West Half (W½) of the Northeast Quarter (NE¼); East Half (E½) of the Southeast Quarter (SE¼) of the Northwest Quarter (NW¼) of Section 20, Township 9 North, Range 10 West, S.B.B. & M.

Tract L-2071: Northwest Quarter (NW¼) of the Southwest Quarter (SW¼) of Section 20, Township 9 North, Range 10 West, S.B.B. & M.

Tract L-2072: East Half (E½) of the Northeast Quarter (NE¼) of Section 20, Township 9 North, Range 10 West, S.B.B. & M.

Dated: March 4, 1953.

WALTER S. BINNS,
United States Attorney,
A. WEYMANN,
Special Attorney, Lands Division,
Department of Justice,

/s/ By A. WEYMANN,
Attorneys for Plaintiff. [235]

Returns on Service of Writ Attached. [236-238]

[Endorsed]: Filed Apr. 4, 1957.

[Title of District Court and Cause No. 1253-ND.]

AMENDED & SUPPLEMENTAL DESIGNATION OF RECORD ON APPEAL

Come now the defendants and amend and supplement their designation of record on appeal as follows:

1. Delete from said designation Government's Exhibit 3 introduced in evidence June 17, 1955, which said exhibit was the Air Force Master Plan, withdrawn by the Government on or before the termination of the hearing of said date.

2. Delete defendants' Exhibits 12 and 14, marked for identification only, in hearing, of February 24, 1954.

3. Add to the record the Notice of Filing Condemnation Action, filed April 4, 1957; said filing date being after Notice of Appeal was herein made and filed.

4. This Amended and Supplemental Designation of Record on Appeal.

Dated: June 6, 1957.

BEARDSLEY, HUFSTEDLER & KEMBLE,

/s/ By SETH M. HUFSTEDLER,
Defendants above named. [241]

Affidavit of Service by Mail Attached. [242]

[Endorsed]: Filed June 7, 1957.

[Title of District Court and Cause No. 1253-ND.]

CERTIFICATE BY CLERK

I, John A. Childress, clerk of the above-entitled Court, hereby certify that the items listed below constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit, in the above-entitled cause:

A. The foregoing pages numbered 1 to 242, inclusive, containing the original:

Complaint;

Declaration of Taking;

Decree on Declaration of Taking;

Motion and Notice of Motion to Set Aside Declaration of Taking and to Vacate and Set Aside Ex Parte Judgment;

Motion and Notice of Motion to Dismiss;

Supplemental Amendment to Motion to Set Aside Declaration of Taking and to Vacate and Set Aside Ex Parte Judgment;

Supplemental Amendment to Motion to Dismiss;

Memorandum of Opinion and Orders;

Findings of Fact and Conclusions of Law;

Judgment;

Advance Sheet of Court of Appeals on Ruling on Appeals 1 and 2 in this case;

Advance Sheet of Court of Appeals on Ruling on Appeal 3 in this case;

Motion and Notice of Motion to Dismiss;

Motion and Notice of Motion to Set Aside Declaration of Taking and to Vacate and Set Aside Ex Parte Judgment;

Affidavit of Pancho Barnes and E. S. McKendry;

Supplemental Specific Information on Motion to Dismiss and Motion to Set Aside Declaration of Taking as Requested by Mr. McPherson, Assistant U. S. Attorney;

Supplement to Motion to Dismiss Including More Definite Statement;

Supplement in Addition to Motion to Set Aside Declaration of Taking and to Vacate and Set Aside Ex Parte Judgment Entered Thereon;

Opposition to Motion to Dismiss and Motion to Set Aside Declaration of Taking and Judgment Thereon;

Affidavit of Richard A. Lavine re Files of United States Attorney's Office;

Affidavit of August Weymann;

Affidavit of Lt. Colonel Robert P. Foley;

Affidavit of Colonel Marion J. Akers;

Affidavit of Brig. General J. S. Holtoner;

Answering Affidavit to all Affidavits filed by Government witnesses in the last 1½ days of the hearings of June 16 and 17, 1955, as per instructions of the Court.

Orders on Motion to Dismiss the Complaint and Motion to Set Aside the Declaration of Taking and to Vacate and Set Aside the Ex Parte Judgment entered thereon;

Motion to Strike Portions of Answer of Pancho Barnes; Motion to Strike Portions of Answer of Pancho Barnes, E. D. McKendry, and William Emmert Barnes; Notice of Motions, and Memorandum of Points and Authorities;

Amended Answer;

Amendment of Findings of Fact, Conclusions of Law, and Final Judgment;

Order Granting Plaintiff's Motion Striking Portions of Defendants' Original Answers; Granting Defendants' Leave to File Proffered Amended Answer with portions thereof stricken;

Findings of Fact, Conclusions of Law, and Final Judgment;

Motion for New Trial;

Order Denying Motion for New Trial;

Notice of Appeal;

Statement of Points to Be Relied Upon on Appeal;

Order Extending Time for Filing Record and Docketing Appeal;

Designation of Record on Appeal;

Notice and Return thereof of filing Complaint in Condemnation;

Amended and Supplemental Designation of Record on Appeal; and a full, true and correct copy of the Minutes of the Court had on June 6, 1955;

B. Reporter's transcript of proceedings (13 volumes) for: September 9, 1953; October 27, 28, 30, 1953; February 23, 24, 25, 1954; May 10, 1954; May 2, 23, 1955; June 16, 17, 1955; December 5, 1955;

C. Depositions of Jules F. Koch, Eugene S. McKendry, Florence Lowe Barnes McKendry, E. S. McKendry, and William Emmert Barnes;

D. Plaintiff's exhibits—Number and year offered: 1, 1954 and 1955; 2, 1954 and 1955 (jointly 1953;

2A, 1955; 3, 1954 and 1956; 4, 1956; 5, 1955; 6, 1953 and 1954 and 1956; 8, 1953; 11, 1953; 13, 1953; 26, 1956; 27, 1956; 28, 1956; 35, 1956; 36, 1956.

Plaintiff's exhibits from case No. 15403-C now exhibits of plaintiff 2, 3, 4, 1954.

Riddell's exhibit No. 1.

Defendants' exhibits—Number and year offered: A, 1955; B, 1955; C, 1955; D, 1955; E, 1955; G, 1955; H, 1955; K, 1955; L, 1955; M, 1955; N, 1956.

Defendants' numbered exhibits and year offered: 1, 1953; 3, 1953 (jointly with plaintiff); 4, 1953 (jointly with plaintiff); 10, 1953; 12, 1954; ZZZ-6, 1956; ZZZ-7, 1956; ZZZ-8, 1956; ZZZ-28, 1956.

I further certify that my fee for preparing the foregoing record amounting to $2.00, has been paid by appellant.

Witness my hand and seal of the said District Court this 11th day of June, 1957.

[Seal] JOHN A. CHILDRESS,
Clerk.

/s/ By CHARLES E. JONES,
Deputy.

In the United States District Court, Southern District of California, Northern Division

No. 1253-ND Civil

UNITED STATES OF AMERICA, Plaintiff,

vs.

360 ACRES OF LAND IN THE COUNTY OF KERN, State of California, E. S. McKENDRY, et al., Defendants.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Fresno, California
September 9, 1953

Honorable Campbell E. Beaumont, Judge presiding.

Appearances: For the Plaintiff: Laughlin E. Waters, Esq., United States Attorney, by August Weymann, Esq., Special Assistant. For the Defendants: Mrs. Pancho Barnes, E. S. McKendry and William Emmert Barnes, each appearing in propria persona. [1]*

Tuesday, September 9, 1953, 10:00 a.m.

(Other court matters.)

The Court: Call the next case.

The Clerk: No. 1253, United States of America

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* Page numbers appearing at top of page of Reporter's Original Transcript of Record.

vs. Lands in the County of Kern. Motion for immediate possession.

Mr. Weymann: Ready, your Honor.

Mrs. Barnes: Ready, your Honor.

The Court: What is this matter, Mr. Weymann?

Mr. Weymann: This is a motion for immediate possession of four parcels of land in connection with the Flight Test Center at the Edwards Air Force Base.

The Court: It is only an order for immediate possession——

Mr. Weymann: It is only an order for immediate possession.

The Court: ——of four parcels of land?

May I have the file, please?

The Clerk: If the Court please, I don't have the original papers in this action at all. I have the Court's copy of the complaint, and two motions that were received this morning, filed by the defendants or one of them.

The Court: They are not to be heard this morning?

Mrs. Barnes: Your Honor,—— [2]

The Court: Wait a minute.

The Clerk: No, these motions are not to be heard this morning.

The Court: When are they set for?

The Clerk: They are set for September 21st. The copy of the complaint is in here, but I don't have—they haven't sent me up the original documents in any of these two. I don't have anything but the copies.

The Court: Now you may be heard.

Mrs. Barnes: This order for immediate possession was supposed to come up this morning, your Honor, but I have filed—that is, myself, or the three of us in pro per, all my family—we have filed a motion for dismissing the condemnation suit on proper grounds, and I think the order will be granted; also the order to set aside declaration of taking, an ex parte judgment, made on very good grounds, your Honor, that have been backed up in many cases.

It seems we have a motion here this morning for possession of land, which is putting the cart before the horse, because there is a motion on file to be heard the 21st, which I understood would be your first available date. I inquired of the Clerk's office down town, and was told that would be your first available date, and I set the motion for that time, and filed the papers the 5th of September, and I do think the other motion should be heard [3] before the order for possession, when there is a motion for an order dismissing the condemnation suit, also setting aside the declaration of taking.

It is going to be a long case, and will shock the conscience of the Court. It will be quite a long time before you will believe—you won't believe the atrocities in this thing. It is just unbelievable. I have to bring out a lot of other things in this hearing involving two other cases on trial. There is going to be quite an amount of evidence your Honor will have to go over, and a great many witnesses, before you can understand the picture, which, on the face

of it, will not be believable. But I do feel at this time the motion to take possession of the property should be continued until the motion to dismiss and the motion to set aside the declaration of taking can be heard, which come up the 21st of this month if it is all right with your Honor. I will appear then on the motion, and supplement it with witnesses, to set aside the declaration of taking, and the motion to dismiss.

The Court: What have you to say?

Mr. Weymann: I object strenuously to any continuance of this motion; and I am prepared now, also, to put Colonel Akers on the stand to show the necessity for the possession of this property.

I would like to call the Court's attention to the fact that a declaration of taking was filed in this case on [4] February 23d, and $194,000 was paid to these defendants upon their petition for a partial distribution under the provisions of Section 258a of Title 40. It seems an anomalous position that these defendants should take almost $200,000 from the government and then move to set aside the declaration of taking.

In any event, I believe it is beyond the jurisdiction of this Court to set aside the declaration of taking.

The Court: The Clerk has stated the papers are not here. I will ask Miss Barnes, is it true you have received this money?

Mrs. Barnes: Your Honor,——

The Court: Just answer "yes" or "no."

Mrs. Barnes: In part.

The Court: What?

Mrs. Barnes: In part; as much as necessity——

The Court: Did you get $192,000?

Mrs. Barnes: No. As much as is——

The Court: Wait. How much did you get?

Mrs. Barnes: I would have to check my figures, your Honor. Anyway, what I want to say——

The Court: I don't want you to say anything until I have a chance to check these figures.

Mrs. Barnes: Okay.

The Court: Did you say $192,000, Mr. Weymann?

Mr. Weymann: In March, $185,000 was paid to or for the account of the defendants Pancho Barnes, E. S. McKendry and William Emmert Barnes.

The Court: Are they the defendants——

Mr. Weymann: They are the defendants.

The Court: ——that are opposing this motion?

Mr. Weymann: Yes.

Of that $185,000, $13,000 was at their direction paid to a bank at Long Beach.

The Court: Of the 185 thousand?

Mr. Weymann: Yes, of the 185 thousand.

The Court: I don't care about that.

Mr. Weymann: In addition, there was thereafter, in the next month, $9,402.73 paid to discharge liens of record, on the petition of these defendants, making $194,402.73.

The Court: Is that shown in the records of this court?

Mr. Weymann: That is shown in the records of this court.

The Court: How does it happen the file was not sent here?

Mrs. Barnes: That is what I would like to know.

The Court: Just a minute. Please don't interrupt.

Mr. Weymann: That should have been sent up here, your Honor. I don't know why it wasn't sent up by the Clerk's office.

The Court: Now I will ask Miss Barnes, did you receive [6] $185,000?

Mrs. Barnes: I don't know, your Honor, but I have received——

The Court: You heard Mr. Weymann's statement. Did you receive anything approximately like that?

Mrs. Barnes: I believe so, your Honor. I believe those figures may be correct.

The Court: And the $9,402 was paid at your request?

Mrs. Barnes: I can't remember the figures, your Honor.

The Court: Approximately that?

Mrs. Barnes: I would say that Mr. Weymann's figures are probably correct. I don't think that is the question.

Your Honor, may I say something? We have practically been in the state of inverse condemnation for several years out there. The government has closed in on us in such a manner, with bad faith,——

The Court: No, don't say that.

Mrs. Barnes: This is in bad faith, and I can prove it.

The Court: Don't make those statements.

Mrs. Barnes: I will make the statement if our land is released to us by the government and we can positively know they won't turn around and take it again, I will return every penny paid out for that account. It was necessitated by the government's action, that we had to draw down certain money to protect ourselves. But should the government return all [7] the land intact, I will return all the money intact, which I am set up to do. I will bring in the figures on the 21st to show all money taken from that account can be immediately returned.

If that is done, I can see no objections, because the actions of the government have put us in the position where we did draw down the money; but we expected all the time the government might try to make a reasonable deal with us and not do something that would be highly unreasonable and highly capricious, such as to shock the conscience of the court. You wait until you see——

The Court: Now, Mr. Weymann, what is the necessity for hearing this matter?

Mr. Weymann: I would like to offer the testimony of Colonel Akers on that matter.

The Court: Make a statement.

Mr. Weymann: I expect to show by Colonel Akers, who is Chief of Staff at this station, that this property lies in the very center of the Edwards Air Force Base. Secret work is being carried on

there, classified work, and there is grave danger of an accident there, of crash landing of planes, and the possibility of injury to persons and the destruction of the property.

The Court: Now, do the defendants have property surrounding this place where you expect landings to be made? [8]

Mr. Weymann: They have property that is in the very center of the flight course.

Mrs. Barnes: I am afraid your Honor is going to be a little bit confused by that statement, because that statement really isn't correct.

Mr. Weymann: And I have Colonel Akers up here to go into the matter in detail.

The Court: Well, the difficulty is that I am expecting to leave Monday, the 14th, and not return until the middle of October.

Mr. Weymann: It is a matter of urgent necessity——

Mrs. Barnes: Your Honor,——

The Court: Wait a minute. Let Mr. Weymann finish his statement.

Mr. Weymann: It is a matter of urgent necessity that this order be granted and that the defendants be given a reasonable time to vacate the premises. Certainly the government should not be placed in the position of being liable for damages for the destruction of property or the injury to or death of people.

The Court: Can you give me the date, or the approximate date, when this $185,000 was paid?

Mr. Weymann: Yes. I have my office file here on

the petition. March 11th or March 12th, Farmers and Merchants Bank of Long Beach, $12,246.24, to E. S. McKendry as Trustee—— [9]

The Court: That is all right. When was the $9,400 paid?

Mr. Weymann: Approximately April 7th, the 7th or 8th.

The Court: Now, what have you to say?

Mrs. Barnes: What I want to say is, your Honor, I have been there over twenty years on that land. I was there before the Air Force was, and they came in later. I have been working for them and with them during all those years.

During the war we had some 15,000 people on that air base, and I know the count because I delivered milk to them. I know the terrain very well, having been flying over twenty years myself. My husband and my son are both pilots. I was one of the first test pilots for Lockheed, and I flew over this territory before the Air Force was there. It was I that opened up that territory and suggested it to the Air Force as establishing it as a place to test airplanes. I went in and showed it to them.

During the war we had training planes there for training pilots, and B36s and P38s. I saw seven P38s burning at one time, and of course there were many others.

Their present runway doesn't point to our land at all. They are building a new runway which will be constructed and possibly ready to go in a definite time. They have contracts calling for the finishing of it in a certain time.

The Court: What is the date? [10]

Mrs. Barnes: What is the date of the contract for the runway that will head towards us?

Mr. Weymann: I haven't any idea, but there is a flight course for aircraft directly over the property.

Mrs. Barnes: Only because it was put there in bad faith, your Honor.

The Court: Never mind this matter of bad faith. That has to be proved.

Mrs. Barnes: I can prove it.

The Court: Your statement or Mr. Weymann's statement as to good faith wouldn't mean anything.

Mrs. Barnes: I see.

The Court: We are here to prove statements.

Mrs. Barnes: I will, sir.

Mr. McKendry: Your Honor, there is a civilian housing project within possibly a mile or a mile and a half——

The Court: Are you an attorney?

Mrs. Barnes: He is a pro per.

The Court: What is your name?

Mr. McKendry: McKendry, M-c-K-e-n-d-r-y.

The Court: Do you desire to say something?

Mr. McKendry: Yes.

The Court: You may.

Mr. McKendry: There is a housing project there at the Air Base, a civilian housing project, with probably four to [11] five thousand people living there, which is far closer to the flight line at the Air Base than our own property is.

Mrs. Barnes: Including schools.

The Court: Mr. Weymann, the Court will have your witness sworn for the purpose of determining the necessity of hearing this today instead of letting it be continued. If it is continued it has to be continued until after the middle of October.

Mrs. Barnes: May I say something? On the 21st, in bringing in the motion to dismiss and set aside the declaration of taking and set aside the ex parte judgment, at that time I am asking the government to produce——

The Court: That isn't before the Court.

Mrs. Barnes: No, but——

The Court: Just don't mention it. I want to hear this witness.

Mrs. Barnes: All right, your Honor.

The Court: Have the witness sworn.

MARION J. AKERS

a witness called on behalf of the Plaintiff, having been first sworn, was examined and testified as follows:

The Clerk: State your full name, please.

The Witness: Colonel Marion J. Akers.

The Clerk: How do you spell your last name?

The Witness: A-k-e-r-s.

The Clerk: Have that seat, Col. Akers, please.

The Court: Mr. Weymann, remember that this witness is being called for a particular purpose, to show whether or not it will be convenient to continue the matter, or whether it should be heard today.

Mr. Weymann: That is correct, your Honor.

Direct Examination

Q. (By Mr. Weymann): Col. Akers, what is your function in connection with the Flight Test Center at Edwards Air Force Base?

A. My function is Chief of Staff assigned to the Air Force Flight Test Center.

Q. And in connection with that, you have general supervision of the administrative branch of the Test Center?

A. It is a little more than that.

Q. Explain to the Court.

A. The position of Chief of Staff is more or less as the title implies. A Chief of Staff is responsible for the supervision and instruction, directions to the various staff members of the organization. The

(Testimony of Marion J. Akers.)

Chief of Staff in turn answers directly to the Commander.

The Court: Will you talk a little louder, please, Colonel.

Read that answer, Mrs. Buck. [13]

(The last answer was read by the reporter.)

Q. (By Mr. Weymann): What is the nature of the work carried on at the Flight Test Center?

A. The assigned mission or missions is to conduct tests of new aircraft, flight tests of new aircraft, the research and development of various components, engines, and so on, in relation to the testing of new aircraft, and the support of research and development effort of other governmental agencies, contractors and so on, in the research and development field.

And have you had prepared under your supervision certain sketches and maps showing the location of this property within the area of the Edwards Air Base?

A. I have (producing documents).

The Court: Just put them on the table. Let Miss Barnes stand there and look at them.

Q. (By Mr. Weymann): Will you state what those sketches are, please?

A. This one here on top is an outline of the area——

Q. Pardon me. "This one here on top" refers to—— A. Enclosure No. 1.

Q. ——Enclosure No. 1.

A. That is an outline of the area for the Flight

(Testimony of Marion J. Akers.)

Test Center. It shows the large runway, the master test runway [14] presently under construction at this point (indicating), and shows the extension line and flight line area for the runway. It shows the two-mile clear zone, a mile either side of the center of this runway, which is specifically designed for safety purposes, this area here (indicating).

The yellow material indicates the property in question.

The Court: That is the property of these defendants here?

The Witness: That is right.

Mrs. Barnes: One minute. May I say something now, your Honor?

The Court: Just wait.

Mrs. Barnes: Okay.

The Court: You may ask a question if you desire.

Mrs. Barnes: All right. Col. Akers, the Air Base now has a contract there let to build a runway, is that correct?

The Court: That is cross examination.

Mrs. Barnes: No,——

The Court: Wait until Mr. Weymann finishes his direct examination.

Mrs. Barnes: I just want to get——

The Court: Don't ask any further questions.

Go ahead, Mr. Weymann.

Mr. Weymann: I would like to offer this in evidence.

The Court: Well, it is not a question of it being in evidence. [15]

(Testimony of Marion J. Akers.)

Mr. Weymann: Very well.

The Court: It is for the benefit of the Court.

Mr. McKendry: Your Honor, may I ask one question on that?

The Court: Now, which one of you is going to conduct the cross examination?

Mrs. Barnes: I will, probably.

The Court: Just one of you can cross examine.

Mrs. Barnes: What do you want to ask?

Mr. McKendry: I was going to ask, this doesn't appear to be the proper shape of our property.

The Court: You can ask that on cross examination, or Miss Barnes can.

Q. (By Mr. Weymann): Now, with reference to Enclosure No. 2, what does that purport to show?

A. Enclosure No. 2 — may I borrow a pencil, please — again shows the new runway, the master test runway, in this location coming out here (indicating), with a flight path. It shows the existing runway presently in use, which is this runway coming out in this direction (indicating).

The Court: That is the upper red mark?

The Witness: That is the flight zone. This (indicating) is the runway itself, which ends here and here (indicating). The airplanes taking off to the southwest fly in this general [16] area on take-off, auxiliary to climbing speed and so on. Approaching for landing the other way, they come in in this direction (indicating).

The Court: What is the other?

The Witness: This runway on the south end of

(Testimony of Marion J. Akers.)

the lake is a runway on the lake bed, which is used for test purposes, and its extension and the flight zone also comes out across here (indicating). The dumbbell-shaped pattern shown on this map is a flight pattern for the all-altitude speed course.

This all-altitude speed course is used in connection with the test work being done.

The Court: What is being done there now?

The Witness: In what respect, sir?

The Court: At that location, in connection with the property you want to take. I want to know now whether the Court can reasonably continue this for a month or so, or whether it has to be heard at once.

The Witness: The object of these maps, your Honor, is to show the flight path area with respect to this property in question. We are flying not only ordinary types of aircraft, but new and experimental types of aircraft. In order to make their approach to this runway presently in use and to this runway (indicating) presently in use, and take off from the runway, it brings them near the property in question.

The reason we do testing is to determine the faults, the [17] things wrong with new airplanes and the new equipment,—determine what is wrong, and fix it. We don't like to expect accidents or mishaps, but they sometimes happen.

Q. (By Mr. Weymann): Now, with reference to the dumbbell-shaped heavy lines, do I understand that that is the speed course which is now being used for experimental craft?

(Testimony of Marion J. Akers.)

A. That is the flight path, generally the flight path, flown by the aircraft using the all-altitude speed course. It is presently in use, and will be for some time, and will continue to be used in conjunction with test work.

Q. Will you tell the Court some of the hazards involved in the use of that property, in that connection? A. To explain what this means,——

The Court: You are now referring to what?

Mr. Weymann: To Enclosure No. 3.

The Witness: Enclosure No. 3 shows the outline here of Rogers Dry Lake. This is Rosamond Dry Lake here (indicating).

Rogers Dry Lake has a surface which is very excellent material for the landing of aircraft. When it is dry, aircraft of most any size can be landed on the lake bed without damage. Because of that, it is very widely used in conjunction with the test work.

The green dots shown here are plots of the nine accidents that have happened in this area in conjunction with test work. [18] Now, the pink dots we see over here (indicating) are these same nine dots or the crash pattern, if you so please, transposed into this location here (indicating).

The 15,000-foot runway which is the present runway under construction will permit test work to be conducted during the rainy season, which heretofore has not been able to be run because the lake bed was wet and the existing runway was not of sufficient length or of the quality required for the work.

The Court: When is the rainy season?

(Testimony of Marion J. Akers.)

The Witness: The rainy season is generally during the winter months.

That is, all this shows is the crash pattern transposed there, which indicates merely that crashes do happen in conjunction with the test work; and where they are going to happen is unpredictable.

The Court: The pink dots don't actually represent crashes?

The Witness: That is correct.

The Court: It is just a transposition that has been made?

The Witness: A transposition of this pattern over there, since this (indicating) will be the active test runway.

The Court: Now, that situation that is there now, how long has that prevailed? In other words, you are asking for immediate possession now of what appears to be a comparatively [19] small tract of property. How many acres are there in the property, in that yellow?

Mr. Weymann: 360, I believe.

The Court: How many?

Mr. Weymann: 360.

The Court: 360. I am trying to get the picture of what the situation is now, and what it will be, say, a month from now.

The Witness: The hazard, your Honor, exists daily, of course, in flying. In the acquisition of the property to complete the expansion program for the test center, the boundary described here on En-

(Testimony of Marion J. Akers.)

closure No. 1 shows the eventual boundary of the reservation.

This (indicating) shows the location of the property in question, more or less of an island, isolated, not exactly in the center but in the central portion.

Mr. McKendry: Your Honor, may I——

The Court: Wait until this witness finishes, if there is any cross examination.

Q. (By Mr. Weymann): Have you finished your answer, Colonel?

A. I trust I have answered the question.

Mr. Weymann: I may say that the order for immediate possession contemplates the granting to the defendants of a reasonable time in which to remove from the premises, 30 or [20] at most 60 days; but, in order to carry on that work and for security reasons, we think the order *whould* be granted at this time giving the defendants a reasonable time, under the circumstances, to remove their property from the location.

The Court: Have you made your showing? Have you finished your showing?

Mr. Weymann: No, I haven't finished yet.

Q. Now, are there any other reasons, Colonel, that you have? Have any private airplanes been flying there?

A. The property in question, your Honor, includes also an air field lying in this locality (indicating), and the possibility of mid-air collision or dangers involved I think are quite obvious when you can see from Enclosure 2 the existing runway.

(Testimony of Marion J. Akers.)

The present runway being used carries the aircraft on take-off in this direction (indicating), and on landing in this way (indicating), close to the property in question.

The Court: Where would the property in question be?

The Witness: This yellow property shown here again.

The aircraft flown by the Test Center, many of them are high-speed aircraft. They cover quite a distance in a relatively short period of time.

The aircraft operating out of this field here (indicating) generally are of a slower speed, and are lighter, smaller aircraft. There is a danger involved there. [21]

Q. (By Mr. Weymann): A danger of what, collision, or——

A. Danger of such mid-air collision, yes.

The Court: Well, now, Colonel, let me ask you a question: This property of the defendants has been in their possession for a number of years, I am sure. That is the fact, is it not?

The Witness: I do not know.

The Court: Do you know, Mr. Weymann?

Mr. Weymann: Well, I presume so.

The Court: You are asking now for an order for immediate possession. There have been certain motions made here which the Court should consider.

Now, let me ask you, in your opinion, if there would be any great possibility of damage if the

(Testimony of Marion J. Akers.)

Court were to continue this matter, say, until the latter part of October.

You have—Well, you just answer the question. I want your unbiased opinion.

The Witness: Your Honor, the hazard, the danger, exists today, exists now and has existed. A continuation of 30 days, 60 days, 90 days, merely continues it that much longer.

It is much the same, if you want to compare it for instance, to—Can we cite the airport, say, at Elizabeth, New Jersey?

The Court: Newark. [22]

The Witness: The population was built up around the airport, and consequently, as a result of crashes, the use of the airport was severely limited.

I hope no accidents happen,—I sincerely hope so—however, we can not say definitely they will not.

The Court: Well, will they be prevented if you are given this order of immediate possession?

The Witness: The accidents, your Honor, may not be prevented. However, the property belonging to someone else may not be damaged. If the property belongs to the government,——

The Court: It belongs to the government now; is that correct?

Mr. Weymann: That is correct.

The Witness: The government can not be sued for damages if there is no one living there. That possibility of loss of life as a result of a crash is eliminated.

The Court: We are not talking about a suit

(Testimony of Marion J. Akers.)

against the government. I am talking about the loss of life that might result or might not result if it is continued.

Now, Mr. Weymann has proposed that the named defendants who own these 360 acres of land should be given 30 to 60 days in which to remove their property. That means that the situation at present would remain in status quo.

There have been these motions made. I don't know anything [23] about the worth of the motions. I have not examined them. They have just been presented today. Mr. Weymann has had no chance to examine these papers.

I want to give everybody a chance in this matter. I do not want to take chances on the loss of life. So I am trying to determine if the Court can reasonably continue this matter until all those can be heard.

Mr. Weymann: There is, of course, the further reason, and that is for reasons of security. These are classified operations that are carried on in there, and in order to protect the security of those operations the government should have possession of the property as soon as reasonably possible, in order to prevent any leakage from these premises.

There is here a motel, for example, on these premises, and people come in and go out there, and that is a thing we seek to put an end to.

The Court: Well, has that condition existed all the time?

Mr. Weymann: That is correct; but there is no

(Testimony of Marion J. Akers.)

reason why it should continue any longer than is necessary.

The Court: Well, there has a motion been made here,——

Mr. Weymann: That is correct.

The Court: ——and the Court should consider that.

Mr. Weymann: That is correct, your Honor. Pardon me, as to these other motions, I haven't seen them at all. [24]

The Court: No. You don't know what they are?

Mr. Weymann: I don't know what they are, except I looked them over in the Clerk's office this morning.

The Court: Miss Barnes, do you desire to ask any questions?

Mrs. Barnes: There is a whole lot of cross-examination of the Colonel, your Honor.

In the first place, this map is very deceptive. They defeat themselves by running all the patterns together. If my place is going to be a hazard and all their flights are going to conflict, how can they run all their patterns across each other?

Mr. Weymann: May I interpose a suggestion?

Mrs. Barnes: The Judge didn't let me interrupt you.

Mr. Weymann: If Miss Barnes is going to cross-examine, I suggest she confine herself to cross-examination. If she is going to give testimony, I would like to have her sworn.

The Court: If you want to cross-examine the

(Testimony of Marion J. Akers.)

Colonel so you can bring out that feature, you may do so by questions.

Mrs. Barnes: Okay.

Cross Examination

Q. (By Mrs. Barnes): In the first place, Colonel, is this yellow spot made in proportion to the size of the acreage to the rest of it? In other words, is this to scale? [25]

A. No, it is not to scale exactly. The map itself is not exactly to scale; it is only approximate.

Q. In other words, you would say the yellow spot, in regard to the rest of it, is made a very big spot, whereas in comparison with the rest of the property it would probably appear the size of a pin point; is that correct? A. No.

Q. Tell me what the difference would be.

A. As I stated before, it is only an approximation to show the general location. There was no attempt made to show it exactly to scale.

The Court: It is larger than it should be?

The Witness: It may be, I don't know.

Q. (By Mrs. Barnes): In fact it is very much larger.

Point out on this particular map where the housing project is where all the 5,000 families are living.

A. I don't know where 5,000 families are living on the reservation.

Q. They are right in this area. Why don't you put them off?

(Testimony of Marion J. Akers.)

A. We do not have 5,000 families. I believe you are——

Q. The housing area, the warehouse, the——

A. They are not 5,000 people.

Q. How many people are there? [26]

The Court: Where is the housing area?

The Witness: The housing area is in this area (indicating).

The Court: About how many miles away from the property in question?

The Witness: I would have to estimate. I would estimate it to be four to five miles.

The Court: North of the property in question?

The Witness: Approximately north, yes, sir.

Q. (By Mrs. Barnes): Which is the existing runway you are using right now?—Wait a minute. You intimate here that this is all government property, and you have got it marked on your map as government property. Is that all government property and deeded to the government except my place?

A. No. As stated previously, this map merely shows the eventual boundaries of the reservation.

Q. In other words, there is a great deal of privately owned property, besides the property we are defending, in this same area, is that correct?

A. There could be.

Q. In fact there is. Do you know that?

A. I don't know.

Q. How do you know so much to testify to this, if you don't know these other things? [27]

(Testimony of Marion J. Akers.)

The Court: You don't need to answer that.

Mrs. Barnes: Okay. Anything else on this?

The Court: Identify that. What is that you have referred to?

Mr. Weymann: Enclosure No. 1.

The Court: Have you any other questions on Enclosure No. 1?

Take the next one then.

Q. (By Mrs. Barnes): This again is a map of the proposed plan, is that correct, Colonel Akers?

A. It is a map indicating the proposed eventual military reservation area.

Q. Is this all owned by the United States excepting the yellow spot which indicates ours?

A. I do not believe it is.

Q. In fact, there is other property in the same vicinity that isn't owned by the government; is that correct? A. I do not know.

The Court: Is it in the runway portion, the other property?

The Witness: Which other property, your Honor?

The Court: Owned by other persons.

The Witness: Yes, sir, there is other property in the runway area. Whether or not all the other property has been [28] acquired or not is the thing I do not know.

Mr. Weymann: It is under condemnation.

The Court: Yes, but so is Miss Barnes'.

Mr. Weymann: Yes. It hasn't all been acquired, though.

(Testimony of Marion J. Akers.)

The Witness: I might clarify one point for the Court.

The Court: If it is on that point, you may do so.

The Witness: Yes, it deals with the acquisition of property.

The Court: No, but does it refer to the other property in that vicinity?

The Witness: Yes, sir, it does.

The Court: Then you may.

The Witness: In fact, the Corps of Engineers acquire the property for the Air Force, then turn it over to us. We do not at the Base go out and acquire the property ourselves. That is the reason I do not know the exact situation in that regard.

Q. (By Mrs. Barnes): Another thing I want to mention. You mentioned the speed course. What is the average elevation flown on that speed course?

A. The average elevation can be any elevation. It is an all-altitude speed course, and is used for test purposes, measuring air speed at any elevation.

Q. What altitude has been used? [29]

A. I couldn't quote specific altitudes, because I am not familiar with it.

Q. It is called "high altitude speed course" do I understand you to say?

A. No, it is an all-altitude speed course.

Q. However, it is used usually at very high altitudes, is that right?

A. I couldn't answer that question specifically. It is used for all altitudes.

(Testimony of Marion J. Akers.)

The Court: That answers the question.

Mr. McKendry: Why does the hazard exist over our area and not over this other area?

Mrs. Barnes: I will word that again.

Q. Why does the hazard exist over our area only, when the same planes go right over the City of Rosamond, which is right down the line?

The Court: How far is that in miles?

Mrs. Barnes: They have drawn——

The Court: No, just answer the question.

Mrs. Barnes: Approximately 12 miles.

The Court: Don't answer that question. It is not material.

Mr. Barnes: Your Honor,——

The Court: What is your name?

Mr. Barnes: William Emmert Barnes. [30]

The question is material. The course drawn on the map goes right over the town of Rosamond. If the existing use of it would be a hazard to our property, it would also be a hazard to the millions —pardon me—hundreds of homes in Rosamond.

The Court: You don't need to answer that question.

Mrs. Barnes: We are trying to decide now——

The Court: Don't ask that question.

Q. (By Mrs. Barnes): Colonel Akers, how long, in your knowledge, has this condition that exists now existed,—how many years? You have had access to the history of the base.

The Court: Just let him answer.

(Testimony of Marion J. Akers.)

Q. (By Mrs. Barnes): How many years has it existed as it exists now?

A. What condition are you referring to?

Q. The operation of the Air Base as a test base, and the defendants' property?

The Witness: I believe, your Honor, that is a question that can not be answered directly.

The Court: Just try to answer it, if you can.

The Witness: The condition, as I understand the question, is one that varies and changes.

The Court: The present condition, how long has it existed? [31]

The Witness: The present condition,—I would like to clarify my statement on that.

Mrs. Barnes: Just let me clarify my question.

The Court: No, no, let him answer.

The Witness: The fact that the present runway, as shown here on Enclosure 2 as I pointed out here, the lake bed runway, the dry lake, the operation of test flights in this location with respect to the property in question, to my knowledge, has existed in one degree or another since I believe it was in 1948 or '49, when they started to conduct test work from here.

However, the tempo of the test activity has increased gradually each year; and that is the point I would like to make clear to the Court, that the activity is constantly increasing.

The Court: Well, I think the Court has heard enough examination and cross-examination.

Mr. Weymann: Very well, your Honor.

Mrs. Barnes: Your Honor,——

The Court: I don't care about hearing anything further.

Mr. Weymann: You may step down, Colonel.

(Witness excused.) * * * * * [32]

Tuesday, October 27, 1953. 10:00 A.M.

* * * * * [39]

GLENN L. ARBOGAST

called as a witness on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you please state your full name.

The Witness: Glenn L. Arbogast, A-r-b-o-g-a-s-t.

Mr. Weymann: At this moment, please, may the record show that the plaintiff objects to any testimony on the part of any of these witnesses called by the defendant, on the ground that the testimony is incompetent and irrelevant to any of the issues in this matter.

The Court: Well, your objection is overruled. The Court has permitted this matter to be brought out of order for the convenience of the witnesses.

Just be seated. Will you give your name, please?

The Witness: Arbogast.

The Court: Proceed. [54]

Direct Examination

Q. (By Miss Barnes): What is your business at this time, Colonel?

A. I am Director of Aeronautics for the City of Long Beach.

(Testimony of Glenn L. Arbogast.)

Q. You have under your care the Municipal Airport of Long Beach? A. I do.

Q. Will you please more or less state the size of that airport in comparison to other airports, for instance, in southern California; how does it rank?

A. That is the second largest airport in southern California.

Q. And the first largest is which one?

A. Los Angeles International.

Q. Do you have factories building aircraft on that Municipal Airport?

A. Yes, we do have Douglas Aircraft.

Q. Douglas Aircraft build airplanes there?

A. That is right.

Q. Do they build jet airplanes?

A. They are not building any jet airplanes at this time, but they are in the way of building jet bombers.

Q. Do jet aircraft land or take off at your airport? A. Yes. [55]

Q. Tell me, Colonel, were you ever commanding officer of the Muroc Air Base? A. I was.

Q. I believe that is now called Edwards Air Flight Test Center. A. Yes.

Q. What years were you commanding officer?

A. September, 1940 to December, 1942.

Q. You were commanding that base at the time war broke out, that is, the second world war?

A. That is right.

Q. What was the function of that base previous to the war? What was the activity?

(Testimony of Glenn L. Arbogast.)

A. A gunnery range.

Q. Did they do any testing at all there?

A. Towards the last they did. They started in in August of 1942.

Q. Previous to the war, did they test radio controlled ships, and so forth? A. They did.

Q. In other words, during your command——

A. Yes, they did, in 1941; I am sorry.

Q. ——it was an aircraft test Base?

A. That is right.

Miss Barnes: I want to establish that because, in court [56] here——

The Court: You don't need to explain to the Court why.

Q. (By Miss Barnes): It was a test base, then, as early as 1940 or 1941? A. 1941.

Q. When was the first test jet airplane flown from Muroc?

A. I believe it was in August, 1942.

Q. Colonel Arbogast, how long have you known this defendant? A. Twenty-five years.

Q. Have you known the defendant's relations with the Air Force and been around where she has been around the Air Force?

A. Please re-state your question.

Q. Well, how did I get along, or how did I get along with the Air Force over the period of years? Did you have any trouble with me yourself, as commanding officer at the Air Base?

A. No, I did not; and you furnished milk to us for years.

(Testimony of Glenn L. Arbogast.)

Mr. Weymann: Just a moment. The witness will please confine himself to answering the questions, although I don't see the materiality of any of it.

The Court: Just do that.

Proceed. [57]

Q. (By Miss Barnes): During that time, was Pancho Barnes a good friend of the Air Force, and did she come around the Base and be nice to people, and the Air Force go to her?

A. Yes.

Q. Now, because of the result of an accident near Elizabeth, New Jersey, I believe, or Newark, there was a commission by Jimmy Doolittle, there was a research of that particular accident, and I believe there were findings in that as to the proper space for the end of the runway, that there should be buildings—What does that say, do you remember by any chance?

A. If I remember right, I think there was a half mile clearance on the end of the runway.

Q. Any further provisions?

A. A height limit, one to 40 or one to 50, whichever it happened to be, on instrument runway or non-instrument.

Q. Was there any other provision at all for the next two miles?

A. That would take in the height limit on it.

Q. Do you remember the specifications of the buildings? You stated for the first half mile it would be clear, no buildings, then the next two

(Testimony of Glenn L. Arbogast.)

miles there was a certain restriction. Do you remember the type of building that such should be in that next two-mile area? [58]

A. No, I do not.

Q. Colonel Arbogast, what rank were you at Muroc when you first took the command?

A. Captain.

Q. And what rank at the end of 1942 had you attained? A. Lieutenant Colonel.

Q. After you left,—that was 1942 you left, was it? A. Yes.

Q. After you left there, did you ever return to work on that Base?

A. Yes, I returned in January of 1946.

Q. And what was your capacity at that time?

A. Deputy Base Commander.

Q. Were the defendants, myself and the two other defendants—not the two other defendants; my son and myself—were we there at that time?

A. Yes.

Q. Were our relations friendly at that time?

A. Yes.

The Court: You have gone into that.

Oh, Miss Barnes, let this gentleman approach you, instead of you having to go around there.

Miss Barnes: He is another pro per, your Honor.

Q. How much activity do you have on the airport which you are now in charge of? [59]

A. Around 20,000 landings and take-offs a month.

(Testimony of Glenn L. Arbogast.)

Q. What is the maximum that you have had there in a month? A. 56,000.

Q. In one month? A. In one month.

Q. As the director of the Municipal Airport, what types of flying do you have off of that field?

A. We have student training and private flying, scheduled and non-scheduled airplanes, military flying, and factory testing.

Q. Do you know the defendants' airport at Muroc? A. Yes.

Q. All of the various kinds of flying that you have at Long Beach, do they seem to get along together, I mean the little private ships, the fast jet ships and the air lines? A. Yes.

Q. Do you consider that the defendants' airport is a good airport and well situated?

A. Yes, for the type it is, commercial.

Miss Barnes: Your witness, Mr. Weymann.

Mr. Weymann: I have no questions, your Honor.

The Court: You are excused.

(Witness excused.)

Mr. Weymann: Now I move to strike the witness' testimony [60] as having no bearing whatever on the good faith of the Secretary or the Assistant Secretary of the Air Force in making his determination of the necessity for the aquisition of the subject property.

The Court: What have you to say about it, Miss Barnes?

Miss Barnes: Will you read what Mr. Weymann said.

(Record referred to read by the reporter.)

Miss Barnes: We think the Secretary of the Air Force got his advice from the subordinates at Muroc, and that the only way that he could know the situation would be through his subordinates.

Also, the witness answered some of the allegations that Mr. Weymann has made in this thick file of papers, in which he opposed our various motions, in which he has stated that the defendant Barnes, Pancho Barnes, had a long history of not getting along with the Air Force, and that there were continuous fights between them; and I think the witness' testimony shows Pancho Barnes did get along with the Air Force and had cooperated with the Air Force.

Also, on September 9th, when Colonel Akers was testifying, Colonel Akers himself brought in the Elizabeth, New Jersey accident and related it to the defendants' property. Consequently, Colonel Arbogast, a director of a very large airport, knew about the ruling made by the committee; and I have tied that in with the earlier testimony on the hearing. [61]

The Court: The Court will take the motion under advisement and rule upon it later.

Call your next witness.

Miss Barnes: Colonel Smith.

A. W. SMITH

called as a witness on behalf of the defendants herein, having been first duly sworn, was examined and testified as follows:

The Clerk: Your name is Colonel A. W. Smith?

The Witness: A. W. Smith.

The Clerk: Have that seat.

Mr. Weymann: May the record show the same objection to all of these witnesses?

The Court: Same ruling of the Court.

Proceed.

The Witness: Your Honor, I would like to ask a question. I am an officer of the regular army, retired; and I would like to know if there are any restrictions on my testifying here.

The Court: Well, I don't know of any. That is a matter I don't know about.

The Witness: I referred to what we get in the way of restrictions (producing document).

The Court: Have you shown that to Miss Barnes?

The Witness: No, I haven't.

The Court: Show it to Miss Barnes and Mr. Weymann. * * * * * [62]

DON SHALITA

called as a witness on behalf of the defendants herein, having been first duly sworn, was examined and testified as follows:

The Clerk: What is your name, please?

The Witness: Don Shalita.

The Clerk: That is S-h-a-l-i-t-a?

The Witness: Yes. [67]

Miss Barnes: Should he state his name again?

The Court: I think it is in the record.

Direct Examination

Q. (By Miss Barnes): What is your address, Mr. Shalita?

A. 1773 Bedford Street, Los Angeles 35.

Q. Do you recall where you were in about January, 1945? A. Yes.

Q. Where? A. At the ranch.

Q. You mean the defendants' ranch?

A. Yes.

Q. Do you recall——

The Court: That is the property involved in this action?

The Witness: Yes, it is.

Q. (By Miss Barnes): Do you recall visiting the office of the Commanding Officer of the Air Base, Colonel Maxwell, during that time?

A. Yes, I do.

Q. Do you remember a conversation—or were you present and do you remember a conversation that took place between Pancho Barnes and Colonel Maxwell? A. Yes.

(Testimony of Don Shalita.)

Q. In reference to the opening of the airport?

A. The airport, yes. [68]

Q. Do you remember any statements that Colonel Maxwell—any definite statements regarding the opening of her airport that he made at that time?

A. Well, he closed it, and he refused to see us.

Q. No, I am talking about a conversation wherein——

The Court: When was this, Miss Barnes?

Miss Barnes: In 1945.

The Court: In 1945. Can you place a date any nearer than that?

Miss Barnes: Well, in January, 1945.

The Court: In January, 1945?

Miss Barnes: Yes.

Q. In the files of the government, in the motion to dismiss, I have fairly well detailed that conversation, and, as you were present at it, I would like to know if that was the statement approximately that took place at that time:

On entering Colonel Maxwell's office, Pancho said, "Hello, Buddy."

Colonel Maxwell said, "Hello, Pancho. I suppose you are going to ask me to open your airport, and the answer is 'No.'"

"Pancho: Why?

"Colonel Maxwell: Oh, there might be an accident some day.

"Pancho: If we went on that theory, there wouldn't be an airport open in the United States.

(Testimony of Don Shalita.)

"Colonel Maxwell: Well, you might as well know that your airport will never be open again.

"Pancho: Sez who?

"Colonel Maxwell: I say so. It will never be open again."

Do you recall a conversation like that, Mr. Shalita? A. Yes, I do.

Q. Is that the true conversation, and can you add anything to it?

A. No, that is exactly the way it was said.

Q. What relation did you have to the defendant at that time, Mr. Shalita?

A. Well, I was your husband. * * * * * [70]

Tuesday, October 27, 1953. 2:00 P.M.

The Court: You may proceed.

Miss Barnes: Your Honor, I would like to take the stand myself.

The Court: You want to take the stand?

Miss Barnes: Yes, I want to take the stand.

The Court: Will this be the only occasion on which you will take the stand?

Miss Barnes: It is hard to say, your Honor. I really don't know.

The Court: The Court would like to know. I want to save as much time as possible.

Miss Barnes: I think so, your Honor.

I will stipulate this is the only time I will take the stand, if I can continue it through. I will make a chronological explanation.

The Court: You may do so.

PANCHO BARNES

a witness on behalf of the defendants herein, having been first duly sworn, testified in narrative form as follows:

Direct Examination

The Clerk: State your name for the record.

The Witness: My name is Pancho Barnes.

I came to Muroc first in about 1928, and flew off of [72] the dry lake at Muroc. I was working at the time as a test pilot and flew airplanes for Lockheed and other factories; and I always liked that location very much, and appreciated the desert for its many good qualities.

In 1933, I went out on the present ranch in the desert, which I bought there at that time, and began living there, and have been there ever since.

When I bought that ranch, I picked it especially in view to flying aircraft and putting in a flying field. It is situated almost equal distance between Rosamond dry lake and Muroc dry lake, and there is a small circle of dry lakes that extend to the south of it practically joining those two lakes.

When I first went to the desert, I started alfalfa farming, and later had a dairy; and when I was in the dairy business I started selling milk, in about 1934 or '5, to the Muroc bombing and gunnery range, which was situated on the east side of Muroc dry lake.

I stayed there doing that sort of work through several years, and we had our little air strip and airplanes that we got in there during that time. And when the World War came on, or just before

(Testimony of Pancho Barnes.)

it came along, the government contacted me and asked me to put in a flight training program under the C.P.T. With the help of the C.A.A. and the Civilian Pilot Training Program, that airport was established, and it was designated there as an airport, and approved by the [73] C.A.A. and the Civilian Pilot Training Program, and a very beautiful airfield, according to specifications, was built.

The hangar was especially constructed for student training. There were rooms in there, eight bedrooms, a bathroom, pilot ready room, class room, shop, lounge, and two offices, and it was a very nice field.

The runway is about 3700 feet long and 400 feet wide, the main runway; then there are two other full runways, running north-south and east-west.

So we trained students there previous to the war and up until December the 7th, when the government closed down all airports within 150 miles of the ocean.

The Court: What year was that?

The Witness: In December, 1941, they closed the airport, as they did all of the airports on the Pacific Ocean within 150 miles of the ocean.

After they closed the airport down, I was unable to take the pilot training away from there, because I had become very much involved, with my son, with the milk contract at the Air Base. We had developed a contract, and which we held for 12 years, selling milk at the Air Base; and because of

(Testimony of Pancho Barnes.)

the terrific demands of the Air Base, which was growing so fast,—they got up to many thousands of people; I believe they had as much as 15,000 people on that Base. They came and went.

The Court: You say you have that many now?

The Witness: No, that was back. The Air Base is comparatively small now, your Honor. At that time the Air Base was very big, and besides flight training, which the Base was mostly devoted to at that time, they had anti-aircraft wandering around the desert which were all based at that Base.

During the time of the war, the Air Force took possession of the airport and named it a satellite field to the Air Base. I was very much in accord with that,—I didn't object to it—but they did take possession by merely breaking in the hangar, which was one of those things, it really didn't matter, and they used it as a training base for anti-aircraft, in that the anti-aircraft defended the Air Base from attack. The P-38's and B-24's from Muroc Air Base and the F4U's from the Marine Base at Mojave would rendezvous there and attempt to "take" the airport—put that in quotes—and the anti-aircraft would fight them off. It was very exciting, like being in the middle of the war. We enjoyed it. It had its hazard, of course, but it was of great interest to all of us.

They continued using the airport for training purposes throughout the war.

In 1945, I had returned from Philadelphia and wanted to re-open my airport. Previously I had

(Testimony of Pancho Barnes.)

made several attempts to re-open my airport. About that time other airports had re-opened, possibly a year or so in advance of that. At one time I thought it was going to be opened, then for some [75] mysterious reason it was kept closed.

In 1945 I went to Colonel Maxwell, who was the Commanding Officer at the Air Base, and asked him to open the field. Before I had a chance to ask him, he said, "I suppose you are going to ask me to re-open your airport. The answer is 'no.'"

The Court: That was in 1945?

The Witness: 1945. He made the statement to me then that the airport would never be opened again. He made it three times. He said I might as well give up the idea; that the Air Corps was going to keep that airport closed.

I told him I believed it was his privilege, as Commanding Officer of the Air Base, to open the field, give his sanction to it. He said, no, he couldn't do that.

I said for him to think it over.

I did nothing at the moment. I think it was as late as the fall of the year, about October, I went before the Interdepartmental State Traffic Control Board, which consisted of the C.A.A., the Navy and the Army,—the three bodies voted on airports —and asked them to review the case and open the airport. It was put to a vote at that time, and it was voted that the airport should be opened, and it was opened then, and has been running ever since.

(Testimony of Pancho Barnes.)

In 1946 the Master Plans were drawn for a great many bases throughout the country, and at that time the Master Plan was drawn for the Muroc Air Base. It was evidently a [76] very well-drawn plan, and quite different, I believe than their present plans are now. Colonel Kluever worked on that plan and was largely responsible——

The Court: How do you spell it?

The Witness: K-l-u-e-v-e-r; Colonel A. F. A. Kluever. He drew the Master Plan, and he was praised very much for his actions in the drawing of that plan. I have a letter here commending him on the fine work he did in drawing that plan at that time, which I would like to read to your Honor.

The Court: Is it important to read that?

The Witness: Well, your Honor, I think the whole case hinges on this.

The Court: Read it, then.

The Witness: This is dated 15 August, 1946.

"Subject: Letter of commendation.

"To: Lieut. Colonel A. F. A. Kluever, A. C." And then it gives his numbers here. Should I give them, too, all of them?

The Court: Never mind. Just read the letter.

The Witness: (Reading.)

"It is with pleasure that I extend to you my commendation for the excellent work you performed while assisting in the preparation of the folder of A.A.F. basic information for Master Planning of Muroc Army Air Field during the period 1 July—13 August, 1946. [77]

(Testimony of Pancho Barnes.)

"The many extra hours that you put in during evenings and on weekends denotes a high regard for duty and loyalty to this Command and the Army Air Forces.

"A copy of this letter will be placed in your 201 file."

It is signed, "S. A. Gilkey, Colonel, Air Corps, Commanding."

Colonel Kluever told me that he submitted the plans back to Wright Field, where they were approved—I believe he said ten copies of the plan—where they were approved. And at one time, just before Colonel Gilkey came in, incidentally, Colonel Kluever was in command some three months of the Muroc Air Base.

In August, 1947, my horse barn burned down. It was a considerable loss, as it was at the time the finest building on the place. Besides just being a horse barn, it contained rooms and offices, and a large loft, and storage for hay and grain, and it had my best stallions in it. It was really a stallion barn. It had my tack room and all my tack—that means saddles, bridles and harnesses—and one part of the barn also took care of the racing sulkies for the trotting horses we had at that time.

This barn burned down, so subsequent to that an enlisted man from the Air Base came and told me that I really owed him a great deal, because he had attempted to save the barn and had succeeded in getting two of the horses out, also wak-

(Testimony of Pancho Barnes.)

ing [78] up the man that was sleeping there, lodged there, to take care of the horses. He said he thought I should give him a horse, that he burned his hand.

I looked at his hand. It didn't appear to be burned very much. He went on to say, "I know who started the fire." I didn't believe him, didn't pay much attention, because I felt, having asked me to give him a horse, he was trying to make a statement; so when he told me he knew who started the fire, I didn't pay much attention.

About a week later, the N.C.O. Club of the Air Force was burned down, and this same man, who was guarding, was killed in the fire. He wasn't where the fire was actually burning; he was unconscious and was smothered.

I worried about it then, he having told me who started the fire, and we started watching and checking, and our suspect in this arson matter was——

Mr. Weymann: I object. Are you mentioning any names?

The Witness: I can.

Mr. Weymann: We certainly will object to it.

The Witness: I would rather not mention the name, because we are still trying to catch him.

Mr. Weymann: All right.

The Witness: Anyway, we spent a great deal of time on it. The fires went on on the base, and there were some eight incendiary fires that all happened in a row, one after [79] the other. In the meantime, I had been in touch and working with Detec-

(Testimony of Pancho Barnes.)

tive Sergeant Ed Hatcher of the arson detail in Los Angeles County, as they also had arson fires around Lancaster, and so forth, and I asked—Mr. Hatcher went to the Air Base to try to get cooperation from them, as we were pretty sure this man was the man that had lighted all the fires.

The Air Base at that time—Colonel Gilkey and Colonel Rau were in command—refused at first to talk to Mr. Hatcher at all, and when they did talk to him I believe they stated to him——

Mr. Weymann: Just a moment. Were you present at those conversations?

The Witness: No, Mr. Weymann.

Mr. Weymann: Then I object, your Honor; hearsay evidence.

Miss Barnes: I have the witness, Mr. Hatcher, with me in court.

The Court: Don't relate anything of which you are not aware.

The Witness: Now, in the meantime, coming back from the arson proceedings, after the N.C.O. Club burned down, the boys that were running the N.C.O. Club wanted a place to move the club, so they approached me and told me—they didn't ask me—they told me they were going to take my place over.

I told them I wasn't going to let them do that.

They said if I didn't let them take it over, they were going to send two or three hundred soldiers over to break up everything on the place.

(Testimony of Pancho Barnes.)

Mr. Weymann: Pardon me; who are these people?

The Witness: You want me to mention the names of those people who made those statements to me?

Mr. Weymann: Yes.

The Witness: Danny Madison.

Mr. Weymann: Who is Danny Madison?

The Witness: A sergeant, he was at that time. This was in '47. He was the sergeant in command of the N.C.O. Club, I believe.

Mr. Weymann: A non-commissioned officer?

The Witness: Yes.

He made the statement that they were going to take the place away from me by force, if I wouldn't——

The Court: Was he the man that made the statement?

The Witness: That is right,—Danny Madison made the statement. He made that statement, I believe, in front of Mr. McKendry.

I told them, of course, that I wouldn't let them do that.

There was a period there where it looked as if they would try to take the place by force. One weekend—I was just trying to remember the date on it, because I could almost remember that date.

The Court: Read that last statement, Mrs. Buck.

(Record referred to read by the reporter.)

The Court: Proceed, Miss Barnes.

The Witness: On a Saturday, some rooms had been rented in the hotel. We had a great deal of

(Testimony of Pancho Barnes.)

trade at that time from Los Angeles, and one of the sergeants from the Air Base—Mr. Weymann likes names; it was Sergeant Brown—rented a room. He had come over and rented a room with his wife on several occasions, and I didn't think much of that; I mean, it didn't occur to us anything would come of it.

Later that day they carried in a great deal of liquor, ice and mix, in the hotel room.

There were some girls came up from Los Angeles. We didn't realize they even knew them. They were in another part of the hotel, and they all finally got together.

I realized it might get a little rough, and I called up at that time the Sheriff's office in Mojave and told them if anything started there I was going to phone them and ask them to come down right away. Also I phoned the Sheriff's office at Lancaster, which was out of my county, over in Los Angeles County. And they agreed to cooperate and come out, also, in case the trouble arrived.

They had a big barbecue there—that is why I can get the exact date. Their Catholic barbecue was going on at Lancaster, and Loren Fote was helping with the barbecue at that end. [82]

In the meantime, I called Danny Madison and all the Sergeants together and gave them a little talking to, in which I told them if anything started or looked bad I was going to shoot first and ask questions later, and please not start anything and get into trouble.

(Testimony of Pancho Barnes.)

Saturday night went off pretty well.

Sunday afternoon there were a great many enlisted men on the place. The bar was full, and there was quite a hubbub. Gus Pachmyer, one of the greatest gunsmiths in the world, came up from Los Angeles to test high velocity rifles, and had with him two men and their wives. They came into the little bar, I was talking with them, and I had to leave to go to my house and see about my little boy, and I heard a great banging and kicking; in fact, I thought the sergeant was kicking the front of the bar and there might be trouble. I thought there might be trouble, and I picked up a working club in my hand—I was afraid to take my gun, there might be trouble.

It was pretty well under control when I got back. The Provost Marshal was there, that is, Buck Moore. He was in the bar, and he had arrived there with the Provost Marshal—I mean with Von Falk, who was top sergeant of the Provost Marshal's office.

Just previous to my leaving the bar, Von Falk had asked me for ice to carry to the rooms where they had all the liquor. The bartender had already told him he wouldn't give him ice; [83] that is what he was angry about.

When I got back there, I told Sergeant Von Falk to leave immediately. He refused to leave; so I asked Captain Moore, who was Provost Marshal at the Air Base, to please take him. Captain Moore asked him to leave, but he refused to go.

(Testimony of Pancho Barnes.)

I got very angry, because the situation was entirely out of line. I went to the telephone and called Colonel Gilkey at the Air Base. Colonel Gilkey was not at the Base. He was away that weekend, and hadn't returned. I tried to call Colonel Rau. Colonel Rau wasn't there either. I tried to phone the officer of the day. They didn't know who the officer of the day was, and couldn't locate one. They seemed to have no man who was officer of the day, in command.

I happened to know General Tooey Spatz very well—he was at that time Chief of Staff of the Air Force—and I called him up. It was three or four in the afternoon here, and much later in Washington. He wasn't in his office. I talked to an Aide of his by the name of Cliff Moore, and he asked me to tell him all about what was going on, and I talked to him about 45 minutes. He had a tape recorder taking down everything I said on the telephone, so later, when they sent me a statement taken from my telephone conversation, I found it exactly right in every detail except for the misspelling of Sergeant Von Falk's name.

He asked me at that time—he told me, "Why didn't you [84] call the Provost Marshal?" I told him the Provost Marshal was already at the ranch; that he was unable to do anything about the situation. So he told me I did the right thing in calling him.

I asked him at that time to phone the Air Base and check and see if I wasn't right, that there was

(Testimony of Pancho Barnes.)

no officer of the day or anyone in command at the Base. He said he would send an investigation out on it.

In the meantime, I felt unhappy possibly getting Captain Moore in trouble because I had given his name in Washington. I also felt a little bad about calling Washington without talking to Colonel Gilkey first, because I didn't really want to get anyone in trouble; so the first thing I did then was call Captain Moore and ask to talk to him. He said he would come right over, which he did.

I told Captain Moore I had given his name to the Chief of Staff in Washington, and advised him to immediately put his top sergeant in the Provost Marshal's office under arrest. He said, "I can't let my boys down. I have to stand back of them." I said, "When they are right it is all right to stand back of them, but not when they are wrong."

Anyway, as a result of the investigation, Captain Moore and Sergeant Von Falk were court martialed.

In the meantime, Colonel Gilkey hadn't arrived on the Base, and I at last realized who I should call, which was Colonel [85] Sidney Smith, who actually properly should have been second in command on the Base, because Colonel Rau wasn't a flight officer. Colonel Smith came over to my house, and that night Jim Doolittle, Jr., was there, and Jim, Jr. and myself talked it all over, because he knew the situation, with Colonel Smith. He said he would get in touch with Gilkey as soon as

(Testimony of Pancho Barnes.)

Gilkey got back, and he phoned me that Gilkey had gotten back, or Gilkey phoned me—I think Colonel Smith phoned me—and asked if they could come over the next morning.

That was about seven o'clock in the morning when they came over, Colonel Gilkey and Colonel Smith, and I explained to Colonel Gilkey in detail the situation on the base, with the N.C.O. Club. It had been very riotous before that, and people from Los Angeles used to go up to the——

The Court: Is that important, what you are saying now?

The Witness: I think so.

The Court: Just omit it.

The Witness: I told Colonel Gilkey the situation. He asked me why I hadn't come direct to him in the first place. I told him I was sorry, but I didn't think he would appreciate me telling him how to run his Base.

He asked me what I thought he should do about it. I told him who were the ringleaders on the Base, and advised him to disperse them as soon as possible. He shipped out nine that [86] week, among them Danny Madison, and shipped them all over the country.

The Base was in order and everything was fine when Colonel Gibson was there, the investigating officer that came from Washington. Colonel Gibson put me on the stand under oath, and I testified three and a half hours as to the condition on the Base at that time. I spent most of the time during

(Testimony of Pancho Barnes.)

that testimony trying to explain to them Colonel Gilkey hadn't known the situation, and as soon as it came to his attention he had, in a very masterful way, gotten rid of all the ringleaders of this gang.

The Court: Miss Barnes, pardon the Court interrupting, but you have talked on quite some time here, and it is very difficult to separate what I call the chaff from the wheat. If there is any particular part that refers to this matter now before the Court, I wish you would reach it.

The Witness: Yes, your Honor.

Colonel Gilkey felt, at the time he was shipping these men out, he should put me out of bounds. I asked him not to do it; I felt I could handle the situation. He had already given me three armed guards, and we had about five of our own. There were eight of us going around armed at the time, in case these boys made any trouble because these ringleaders were being shipped out.

The first day we were put out of bounds, everyone in the [87] desert heard it, and the conclusion was drawn that we must have been doing something terrible to be put out of bounds. It would never occur to them to think it was to protect us from the Air Force, and not to protect the Air Force from us. Colonel Gilkey, when he did that, did not mean to give the impression that was created, did not mean to get us labelled as a house of ill repute and——

Mr. Weyman: Pardon me. I don't know to what

(Testimony of Pancho Barnes.)

this testimony is directed. That is the reason I haven't objected to it.

The Court: I wish you would get to the point.

The Witness: I am almost there, your Honor.

The Court: I wish you would.

The Witness: Because after all this happened, Colonel Gilkey became angry at me, possibly because I reported the situation to Washington, but also because I was trying so hard to catch the pyromaniac that was burning up everything on the Air Base and all around the surrounding country. I was annoying him with the pleas trying to reach him and cooperate and catch this man, and we didn't get any cooperation from him. I bothered him so much that he told me he was re-locating the main runway of the Air Base to just be sure he got rid of me, and run it straight through my place.

I knew Colonel Kluever's plan; I didn't believe him when he told me he would actually do it, but subsequent events [88] proved that is exactly what he did, and millions of dollars——

Mr. Weymann: I move that go out.

The Court: I didn't hear you, Mr. Weymann.

Mr. Weymann: I move that go out, "subsequent events proved that was exactly what he was doing." That is merely a conclusion.

The Court: It may go out.

The Witness: He told me he would re-locate the runway so it would be directed right at our place and through our place, in order to get rid of us

(Testimony of Pancho Barnes.)

there at the ranch because I was causing him too much difficulty.

The Court: Will you read that last statement.

(The statement referred to was read by the reporter.)

The Witness: Colonel Kluever——

The Court: Read that again.

(The record was again read by the reporter.)

The Witness: The original runway——

The Court: Which Colonel told you that?

The Witness: Colonel Gilkey, Colonel Signa Gilkey.

The Court: Is there anything further?

The Witness: Yes, quite a lot, your Honor.

The Court: Well, I don't want it to take up too much time. A lot of this, the connection is so slight I would say it is immaterial. I would like to get to the important part.

The Witness: Colonel Kluever is in Wadsworth General [89] Hospital right now, and he wanted to come as a witness, and was subpoenaed, in fact, as a witness,—that is, he was about to be. He made a little drawing of the original plan from his memory, and he wrote in longhand this (indicating), and had it notarized. The man that notarized it was with Colonel Kluever and brought it here to court, and, in the absence of Colonel Kluever, he is a witness. I would like very much to put his statement and the original map of the master plan in the record, your Honor.

(Testimony of Pancho Barnes.)

The Court: Did you give a copy of that to Mr. Weymann?

The Witness: May I read it, to your Honor?

(Document handed to counsel for plaintiff.)

Mr. Weymann: Of course, this is objected to.

The Court: I didn't hear you, Mr. Weymann.

Mr. Weymann: I say this is objected to, no proper foundation laid, and no opportunity for cross examination. It is simply an affidavit that is executed by a man whose relation to this proceeding hasn't been shown at all, or that he had any authority to make it.

The Court: What have you to say about this, Miss Barnes?

The Witness: I have a recommendation from Colonel Gilkey to him regarding it; I have his notarized statement in his own handwriting, made last Saturday in the General Hospital and if I can't have this in evidence now and I can take his evidence later before the Judge, he would be very glad to [90] appear. I think he would be able to in about a week.

Mr. Weymann: Of course we have a right to cross-examine.

I want to make this further observation, if the Court please: I am prepared to show that neither Colonel Gilkey nor any other Colonel at the Air Base had any authority to designate the layout of that Base. They prepared plans, yes; but until those plans were approved by competent authority, they meant nothing.

(Testimony of Pancho Barnes.)

The Court: The objection is sustained.

The Witness: May I make a remark?

The Court: Well, the Court has already ruled. What do you want to remark about?

The Witness: I was going to remark about the fact I have tried to subpoena those plans. The original master plan was approved, and I have attempted to subpoena those plans, and subpoena General Holtoner with those plans, for deposition, in order to bring those things in; but the government has been absolutely uncooperative in any way, and never gave me a chance to take any depositions or get hold of any documents. They always have a fine excuse, for some reason; because it is the government, it can't be allowed.

I don't know why the government should be so much different. Why should they have the right to keep everything out of a reclamation suit? Why should they have the privilege of concealing everything and not allowing me to see anything? [91] I could authenticate everything, because I know——

The Court: The Court has already ruled. Have you anything further to say?

The Witness: In about 1949, after diligently trying to catch a pyromaniac and arsonist that was attempting to burn the Air Base down, I followed his habits so very thoroughly, and also was in contact with the Sheriff's office at Los Angeles and the Sheriff's Department in Lancaster,—We were all trying to catch him. I studied his habits, and I realized he was going to come and try to burn down my

(Testimony of Pancho Barnes.)

hangar on—Do you remember the date? Anyway, it was the last part of July; I think it was my birthday, July 29, 1949. He had come around to our airport and asked the mechanic there how many people were sleeping in the hangar, and a lot of questions. I knew he was a pyro, and consequently I went to him and said, "Look, don't come around here or be on this place whatever. Stay away."

I was so concerned I went and hired two sheriffs on their off time, from Lancaster, to watch the hangar on Friday night and Saturday night of the big rodeo we were having. There were thousands of people at one of these big champion rodeos, sort of a national—an international rodeo, actually. There were thousands of people present.

I had the sheriffs there to watch for him. He came in about nine-thirty that evening, drove up to the hangar, got [92] out of the car, and went over and into the hangar, and started walking around. They watched him at first, but went over and picked him up before he had a chance to set the fire.

He had a method of using containers that would melt easily with high-test gasoline, and laying them out on concrete, and using some substance that would ignite, such as phosphorous or iodine, the arson men explained to me. I don't know how it worked. It meant he could be away from the hangar and be gone 20 or 30 minutes, say, before the fire broke out, and have a chance to have an alibi, be with someone, and be back at the fire for the excitement.

(Testimony of Pancho Barnes.)

When the sheriffs picked him up, they picked him up before he had a chance to light the fire, although he had all the equipment to light the fire and the whole thing was obvious, inasmuch as we had followed him so closely and knew what he was going to do.

When they picked him up they found a concealed weapon on him, and preferred charges of carrying concealed weapons. He was tried for carrying concealed weapons, and sentenced to six months in the County Jail in Bakersfield. He was a soldier from the Air Base. He was the driver that drove the legal officer, Major Wallie Horlick, around. Major Horlick did a lot of checking on all the fires that occurred on the Base, and all during that time his driver was right with him, and that was the man that we caught. [93]

As I say, Colonel Gilkey wouldn't help us with it. Consequently the pyromaniac was in jail at the time General Boyd took command. I went to General Boyd——

The Court: Does that have anything to do with this particular matter before the Court?

The Witness: Yes, your Honor.

The Court: Explain what it has to do with it.

Mr. Weymann: I haven't objected to any of this testimony.

The Witness: Your Honor, what I am establishing and what I will prove with my witnesses is that everything I am saying is true. It is on bad faith. My reputation has been blackened on account of

(Testimony of Pancho Barnes.)

trying to get rid of me, and they re-located the runway on my place because all this happened. Since in 1945, when they refused to re-open my airport, they have showed continuous bad faith on the part of the Air Force. They have let my reputation be blackened for eight years, and now the FBI has been chasing us six months that I know of, and confronting guests and people on the ranch. I estimate——

The Court: You are making an argument now.

The Witness: No, I am stating what I will prove.

The Court: I say you are making an argument. I don't want any discussion.

The Witness: Yes, your Honor.

The Court: I only want you to testify to the facts. If you have any facts to present that will relate to the [94] matters before the Court, you may tell them.

The Witness: I attended a meeting I spoke of previously, when the C.A.A., the Navy and the Air Force voted whether my field should be opened or not. The C.A.A. and the Navy voted "Yes", and even at that time the Air Force voted "No", to try to keep it closed back in 1945.

They have "bucked" me in a great many things. While I have been very friendly and love the Air Force and a great many people in it, at the same time there have been people on it that have tried to crush me. They have the FBI right at this time

(Testimony of Pancho Barnes.)

checking on my place, embarrassing my guests and embarrassing former employees.

The Court: Is there any further testimony you wish to present?

The Witness: I know for a fact, your Honor absolutely, that the runway ran to the south of the —to the lower end of Muroc Lake, across the chain of lakes into Rosamond Lake, the east-west, and the north-south up and down the lake. I know for a fact that is where it was designed; and I know they re-located it. I don't know why they re-located it but I know Colonel Gilkey told me they re-located it in order to run it through my property. [95]

* * * * *

Miss Barnes: May I call Colonel Akers under Section 2055 as an adverse witness?

The Court: That isn't exactly the section to call the witness under in the Federal Court, but the Court knows what you mean.

Miss Barnes: Well, as an adverse witness under the proper section, your Honor.

The Court: Very well.

MARION J. AKERS

called as an adverse witness by the defendants, having been first duly sworn, was examined and testified as follows:

The Clerk: What is your name, please?

The Witness: Marion J. Akers.

The Clerk: Colonel Marion J. Akers, A-k-e-r-s.

Examination

Q. (By Miss Barnes): Colonel Akers, what is your capacity at the Air Base?

A. My duty or assignment is Chief of Staff, Air Force Flight Test Center.

Mr. Weymann: Colonel, if you will, speak up a little more loudly if you can, please. I can't hear you.

Q. (By Miss Barnes): Colonel Akers, I subpoenaed you as an adverse witness duces tecum with the same enclosures and maps that you had here in court on the 9th of September. Will you please produce those maps? [98]

* * * * *

Mr. McKendry: I am sorry. The statement I would like to make is the map they had in court on September 9th was much larger, and the right hand side of the map was on the edge of Muroc Lake. This map shows 20 miles on further. The maps [101] in court on September 9th were much larger than these. There is very little similarity at all.

Mr. Weymann: Colonel Akers is under oath. He can be examined.

(Testimony of Marion J. Akers.)

The Court: Well, you are an attorney and an officer of the court.

Mr. Weymann: I am, your Honor.

The Court: These have been in your possession?

Mr. Weymann: These have been in my possession since September 9th, and in my files.

The Court: And these are the same maps?

Mr. Weymann: Those are the same maps I showed Colonel Akers the last time he testified.

The Court: Just glancing at them, they appear to be the same maps that I saw.

Mr. Weymann: These sketches——

Miss Barnes: This——

The Court: Wait a minute. What is the number of this map?

Miss Barnes: What is "this map"?

The Court: This is Enclosure No. 1.

Miss Barnes: I would like to tell you about it. Am I in order telling you about it?

The Court: If you can point out any discrepancy between this and any other map that was used, do it. [102]

Miss Barnes: It is very simple, your Honor. The other map was far larger. It was done in crayon—I believe it was crayon. It was colored a blue-green color. It ended at the Air Base, the east end of Muroc Lake. It didn't take in as much territory. The map itself was much larger. This is not the same map, your Honor. I know positively.

The Court: That is all right; just stand aside.

Is there something you desire to say?

(Testimony of Marion J. Akers.)

Mr. McKendry: Yes, your Honor. Page 8 of the transcript, line 17, Mr. Weymann stated——

Miss Barnes: Put Mr. Weymann on the stand under oath.

The Court: Wait a minute, Miss Barnes. Don't keep interrupting.

Mr. McKendry: (Reading)

"Mr. Weymann: I expect to show by Colonel Akers, who is Chief of Staff at this station, that this property lies in the very center of the Edwards Air Force Base."

And the map in court September 9th did show that property in question was in the center of that map and the proposed military reservation.

This map in court today, which is not the same map, shows an additional 20 miles east of what the other map did.

The Court: Let's try to figure this out.

(Court examining documents.)

The Court: When you speak of the "dumb bells" are [103] these (indicating) the ones?

The Witness: Yes, those are the turn-around points, commonly referred to as "dumb bells".

The Court: Now, may I have Enclosure No. 3.

(Document handed to the Court.)

The Court: Mrs. Buck, will you read the offer Miss Barnes made about receiving these maps into evidence?

(Record read by reporter as follows:

"I want them marked for identification, your

(Testimony of Marion J. Akers.)

Honor, so they won't get away from us again.")

The Court: Let them be marked for identification. What is the next number?

The Clerk: Pancho Barnes' Exhibit 2.

Miss Barnes: I want the original maps——

The Court: The one marked "Enclosure No. 1" will be marked Pancho Barnes' Exhibit 2; the one marked "Enclosure No. 2" will be marked Pancho Barnes' Exhibit No. 3; and the one marked in pencil "Enclosure No. 3" will be marked as Pancho Barnes' Exhibit No. 4, for identification. All these maps are for identification.

(The maps referred to were marked as Pancho Barnes' Exhibits Nos. 2, 3 and 4, respectively, for identification.)

The Court: There was also offered this transcript of September 9, 1953, pages 1 to 36, inclusive, in the case of [104] United States of America vs. 360 Acres of Land in Kern County, action No. 1253-ND. Let that be received into evidence and marked as Pancho Barnes' Exhibit No. 5. That may be received in evidence; these maps are marked for identification.

(The transcript referred to was marked Pancho Barnes' Exhibit No. 5, and was received in evidence.)

The Court: I wouldn't handle these too much, Mr. Eiland.

Mr. Weymann: I would like to state to the Court I definitely resent the insinuation of the defendants that I have been a party to any falsifica-

(Testimony of Marion J. Akers.)

tion of testimony or exhibits offered. In more than 30 years at the bar, that is the first time any insinuation has been made of such nature, and I resent it deeply.

The Court: I suppose you do not expect the Court to make any statement in regard to what you said.

Mr. Weymann: I don't believe it will be necessary, your Honor.

The Court: I didn't hear you.

Mr. Weymann: I don't believe it will be necessary.

The Court: Have you any further cross examination?

Miss Barnes: Yes, indeed I have, your Honor.

The Court: I may state I have read all of the transcript that was received in evidence, and have examined the maps carefully.

Miss Barnes: I don't really need to look at the maps, [105] your Honor; I can see the original maps, and I can see those. I happen to have what is called photographic memory, and I remember the original maps perfectly, and that they did not extend to the east of Muroc Dry Lake. All three of them were the same.

These are three separate maps to the maps brought in to court before. However, regarding them there is a certain similarity between these maps and the other maps. For instance, they show nine spots on the lake. They are not grouped the same as they were on the original map, your Honor.

(Testimony of Marion J. Akers.)

They were grouped at that time more as one group, and are now strung out.

Then they showed another theoretical runway right across the defendants' property, showing a transposition of dots across the defendants' runway. They use the same pattern again, which again is not the same as it was on the original maps exhibited.

The Court: You are now referring to Enclosure No. 3?

Miss Barnes: I am referring to the dots on the dry lake, transposed again——

The Court: These (indicating) are the dots?

Miss Barnes: That is right.

The Court: On Enclosure No. 3.

Miss Barnes: I am referring to Enclosure No. 3.

If you will remember, your Honor, on the original map they presented, those pink dots were more grouped together, [106] and went past the yellow spot on the map.

The Court: You may proceed, Miss Barnes.

Miss Barnes: I referred to these dots (indicating), your Honor. They showed the nine green dots, and then the nine pink dots as transposed. On the original map the green dots were grouped down toward the edge of Muroc Dry Lake, in a closer group, then, when transposed, they were transposed in exactly the same manner, in the same position, and showing them transposed over the defendants' property, but farther out, in other words past the yellow mark of the defendants' property, in a far closer group.

(Testimony of Marion J. Akers.)

I would like now to ask Colonel Akers, these nine accidents that you have shown there on the map, how did they occur?

The Court: Oh, I don't believe you need go into that.

Miss Barnes: That is very important, your Honor, because he is trying to prove that these accidents were take-off accidents, and if they were——

The Court: You may have a few minutes on that, not very long.

Q. (By Miss Barnes): How did those accidents occur, Colonel Akers?

A. May it please the Court, I don't know what accident she is talking about. I have not had an opportunity to review the map. [107]

The Court: She is referring to these green dots on the map.

The Witness: I want to be sure we are talking about the same thing. I haven't had a chance to see the maps in question.

Q. (By Miss Barnes): Not these maps, but you saw the maps we had in court September 9th, did you not, Colonel Akers?

The Witness: May I ask the question be restated?

Miss Barnes: I say——

The Court: No, let the question be read.

(Pending question read by reporter.)

Mr. Weymann: I object to the form of the question.

The Court: The objection is overruled.

(Testimony of Marion J. Akers.)

Now, pay attention to the question. Read it again.

(The last question was again read by reporter.)

The Witness: I am trying to ascertain, may it please the Court, which question I am to answer first.

The Court: Answer the last question first. Read it.

(The last question was again read by reporter.)

The Witness: Yes, I saw the maps which we had in court on September 9th, which, incidentally, are the same maps we have here.

The Court: Now, read the other question, if there is one pending. [108]

(The question referred to was read by the reporter as follows:

"Q. How did those accidents occur, Colonel Akers?")

The Witness: May it please the Court, the detained explanation as to causes and results of certain accidents are classified information. I can state generally these accidents occurred during the course of processing and testing certain types of aircraft.

The Court: That is a sufficient answer.

Q. (By Miss Barnes): Colonel Akers, is it true that these accidents, as specified on the map, actually occurred? Do those dots actually authenticate an accident? I am not asking for secret disclosures. Are those dots actually an accident, and can you prove they are accidents?

(Testimony of Marion J. Akers.)

The Court: Not what he can prove.

Do you know, did accidents actually occur at the places where the green spots occur?

The Witness: At those locations, yes, sir.

Q. (By Miss Barnes): Over what period of years did these accidents occur?

A. As I recall it, it was during a period of time from 1949 through 1952.

The Court: Any further questions?

Miss Barnes: Yes, your Honor. It is very important—— [109]

The Court: Proceed.

Miss Barnes: This has to do also with——

The Court: Proceed.

Q. (By Miss Barnes): Where did you get the information that these accidents had occurred, in order to put them onto these maps?

A. I obtained the information from the files of the aircraft accidents.

Q. Who made those maps, Colonel Akers?

A. Which maps?

Q. The ones we have in court today. Who made those, and who made the ones we had the other day? Did a different party make——

The Court: He testified they are the same. Don't continue to refer to other maps.

Miss Barnes: Okay.

Q. Who made these maps?

A. I can't tell exactly which individual made them. They were made under my direction and supervision.

(Testimony of Marion J. Akers.)

Q. Who did you direct to make them?

A. I assigned the function to Lieutenant Colonel Elvin.

Q. And do you know whether or not these accidents, as marked, were actually authentic accidents, or whether he just made a group of accidents?

The Court: That has been asked and answered. Don't [110] answer.

Q. (By Miss Barnes): Colonel Akers, in the original hearing on the 9th of September, you implied in that transcript that the defendants' property was in danger because of aircraft accidents; did you not?

The Court: Without regard to whether he implied it or not, from the transposition of these dots where the accidents occurred here, and placing them on this proposed runway,——

This (indicating) is the old runway, is it not?

The Witness: That is the runway on the lake bed, your Honor.

The Court: That is the present one?

The Witness: That is an existing runway on the lake bed.

The Court: It is now being used?

The Witness: It is now being used.

The Court: Is it proposed to place your runway as indicated by this diagonal—I won't say "diagonal"—by this straight runway which is marked here (indicating), and on which the yellow spot is about half way in the middle?

(Testimony of Marion J. Akers.)

The Witness: The runway, your Honor, is shown there approximately the center of the map.

This (indicating) is the proposed runway and is presently under construction. The area, the rectangular area within that is the clear zone area on either side of the runway and [14] off the ends. It will not all be runway, only this portion shown here in heavy lines.

The Court: That is from this part (indicating) —there is no mark here but we will say this heavy line which appears about where the Judge has his finger, to this place here (indicating) where the Judge also has his finger, is that correct?

The Witness: That is correct.

The Court: Suppose we mark that "A" and "B"; is that satisfactory, Mrs. Barnes?

Miss Barnes: If they get it right, your Honor; if they mark it correctly.

The Court: We will see it is right.

Is this——

The Witness: East.

The Court: This (indicating) is east, and this (indicating) is north?

The Witness: Yes, sir.

The Court: And this proposed line here runs northeasterly and southwesterly?

The Witness: That is correct.

The Court: I will put the "A" at the point of intersection, then. That is the beginning of the proposed runway?

(Testimony of Marion J. Akers.)

The Witness: That is the approximate location, yes, sir.

The Court: And "B" will be at the other end of the [112] proposed runway here (indicating)?

The Witness: That is correct.

(The Court marking on exhibit.)

The Court: Is that satisfactory to you, "A" and "B" (indicating)?

Miss Barnes: That is approximately right, your Honor.

I would like to prove a certain thing, your Honor.

The Court: What is it you want to prove?

Miss Barnes: I would like to prove, your Honor, that Colonel Akers is trying to claim we are in a position of danger by showing these accidents ran out along the line. They are actually made on the dry lake. Those are landing accidents, when people come back. They weren't made on take-offs, if they are any accidents at all.

In other words, I don't know if they are authentic accidents. I don't believe they are very careful about it. They are different groupings than they had on the original map.

The Court: The Court has to rule on that. You may proceed with your cross-examination.

Q. (By Miss Barnes): You mentioned, on September 9th, that you likened our place to Elizabeth, New Jersey, or Newark, the accident there, and that those things could happen here, and that

(Testimony of Marion J. Akers.)

is the reason you needed the space in front of the runway. Do you remember that? [113]

A. Is that a question or a statement.

The Court: That is a question.

Miss Barnes: I say, do you remember that you likened it——

The Court: It is in the record substantially as Miss Barnes stated it. Let me show it to you.

Miss Barnes: Page 22, your Honor.

The Court: Colonel, will you read it, beginning here (indicating). Don't read it out loud; just read to yourself, beginning with this line (indicating).

(Witness referring to transcript.)

The Court: Now, what is your question, Miss Barnes? He has read the transcript; he understands it.

Q. (By Miss Barnes): Would you compare this situation to what you call the Elizabeth, New Jersey airport, the Newark airport?

A. It is a matter of definition of "comparison." There is a similarity of cases, in my opinion.

Q. Do you know that there was an open investigating committee——

The Court: Don't ask any more questions about what happened back in New Jersey.

Q. (By Biss Barnes): I would like you to answer "yes" or "no" whether those accidents were take-off or landing accidents. Not "yes" [114] or "no". Were those accidents on take-offs?

(Testimony of Marion J. Akers.)

A. Not all of them, no. Those accidents, as I recall, were both take-off and landing accidents.

Q. How many take-off accidents do you think there were?

A. I don't recall the numbers.

The Court: Have you any further cross-examination?

Miss Barnes: Yes. Can we look at the maps?

The Court: Yes, but——

Miss Barnes: Well, I won't.

The Court: You may look a them.

Miss Barnes: There is quite a difference in them, your Honor.

The Court: You keep saying there is quite a difference in them.

Miss Barnes: There is.

The Court: Because the Court doesn't say anything doesn't mean he agrees with you.

Mr. Lazar: Your Honor, I would like to apply to the Court, as to the necessity, to appear as amicus curae, again. Since that is the point in question, and since Colonel Akers seems to be the responsible officer that can testify to that, and it is a determining factor in the government's cases that are going to come up, we should be given the opportunity of cross-examining him as to what their concept of necessity is and how far it extends. [115]

The Court: The Court will consider that.

Miss Barnes: Could we look at the maps without touching them? Just hold them up a little?

(Testimony of Marion J. Akers.)

The Court: Is this (indicating) the one you want to see?

Miss Barnes: No. 1.

The Court: It says "Military Reservation" in green and "Barnes and McKendry property" in yellow; and the testimony in the record is that this is not drawn to scale, because, as I understand it, it would not be as large as that, and would be larger than a pin point.

Miss Barnes: Well, that——

The Court: Wait.

Miss Barnes asked you if it would be merely a pin point, and you answered no, but it wouldn't be as large as it is here?

The Witness: I believe the testimony indicates I stated there was no attempt to draw these maps accurately; it was merely used to indicate——

The Court: That is clear from the record.

The Court will take a recess at this time until 10:00 o'clock tomorrow. [116]

* * * * *

Wednesday, October 28, 1953. 10:00 a.m.

The Clerk: The case of No. 1253, United States vs. Barnes, et al., which was on trial yesterday, won't be able to go on this morning. Judge Beaumont is sick; so the case that is supposed to go on this morning will go over until Friday morning, October 30th, at 10:00 o'clock.

All the witnesses that are here are ordered to return into court Friday morning at 10:00 o'clock.

That is all.

(Whereupon the further hearing in the above entitled matter was continued to Friday, October 30, 1953, at 10:00 o'clock a.m.) [123]

Friday, October 30, 1953. 10:00 a.m.

* * * * *

DeWOLFE H. MILLER

called as a witness on behalf of the plaintiff herein, having been first duly sworn, was examined and testified as follows:

The Clerk: State your full name, please.

The Witness: DeWolfe H. Miller. [126]

The Clerk: D-e-W-o-l-f-e?

The Witness: D-e-W-o-l-f-e.

The Clerk: Have that seat.

Direct Examination

Q. (By Mr. Weymann): Colonel Miller, you are a Colonel in the United States Air Force?

A. That is correct.

Q. And to what branch of the Air Force are you assigned?

A. I am assigned as Director of Installations Headquarters, Air Research——

The Court: Talk a little louder.

The Witness: I am assigned as Director of Installations, Air Research and Development Command, with headquarters at Baltimore, Maryland.

Q. (By Mr. Weymann): And in that capacity, are you familiar with the so-called Master Plan of the Edwards Air Force Base?

A. I am.

(Testimony of DeWolfe H. Miller.)

Q. And with particular reference to the Flight Test Center? A. Yes, sir.

Q. And the test runway under construction?

A. Yes, sir.

Q. Do you know who designed the Master Plan which is [127] now adopted and in effect?

A. Yes, sir.

Q. Who designed it?

A. The J. Gordon Turnbull Company. [128]

* * * * *

Q. (By Mr. Weymann): And they submitted a report on their conclusions? [130]

A. That is right. That report was made and presented to the Air Staff.

Q. And then what action was taken?

A. On that basis, we requested the necessary funds from Congress to put that plan in effect.

The Court: Read that answer.

(The answer was read.)

The Court: Who requested?

The Witness: Sir, the formulation of the Public Works program by which we get funds from Congress to build structures or acquire land is formulated at the station, reviewed by the Major Command, submitted to Air Force, where it is again reviewed, and goes through the regular legislative channels to the Congress.

The Court: I don't recall whether you said "We made the request"——

The Witness: What I meant was Air Force made the request.

(Testimony of DeWolfe H. Miller.)

Q. (By Mr. Weymann): Air Force, that is, the Command at Baltimore?

A. Actually it would be the Command at Baltimore would submit their program to Headquarters in Air Force, which in turn goes to the Department of Defense, and eventually to the committees of Congress.

The Court: Read that last statement.

(The answer was read by the reporter as follows: [131] "Actually it would be the Command at Baltimore would submit their program to Headquarters"——)

The Court: Where are the Headquarters?

The Witness: Headquarters, United States Air Force, Washington, D. C.

Q. (By Mr. Weymann): And upon that approval by the head of the Air Force, the Air Force Command, did the Secretary of the Air Force authorize the condemnation of the subject property?

A. I believe that is the usual procedure.

The Court: Read that Answer.

(The Answer referred to was read by the Reporter.)

The Court: That is not a sufficient answer. That answer may go out.

Q. (By Mr. Weymann): Do you know if the Secretary of the Air Force approved the plan submitted? A. Yes, sir.

The Court: Well, did he?

The Witness: Yes, sir. His committee approved

(Testimony of DeWolfe H. Miller.)

the—the Chief of Staff of the Air Force, acting for him, approved it.

Mr. Weymann: That is all. You may cross-examine.

Cross Examination

Q. (By Miss Barnes): [132] Colonel Miller, were you ever stationed at Muroc Air Base?

A. I was attached there for approximately two weeks.

Q. And at what time, what period, what date?

A. That was in December 1940. The first few buildings on the new Base were under construction.

Q. Who was the Commanding Officer at that time?

A. Colonel—Captain at that time,—I can't recall his name.

Q. Arbogast? A. Arbogast.

Q. It would be now Colonel Arbogast?

A. It is now Colonel Arbogast.

Q. Was that the same Colonel Arbogast that testified here, in fact, I think, one of the two opening witnesses I had? A. That is correct.

Q. That is the same man. Colonel Arbogast testified, if you will remember, that that was a test base previous to the war.

Can you remember that testimony he gave?

A. I do.

Q. Is that correct?

A. I was not charged with knowledge at that time of the mission of the Base. To my knowledge,

(Testimony of DeWolfe H. Miller.)

it was considered [133] mainly a bombing range for March Field.

Q. In other words, they were testing bombs, is that correct?

A. Dropping bombs in the usual pattern.

Q. Wouldn't you say that was test work?

A. No, I would say it was crew training.

Q. Whose recommendations did the Turnbull Company use regarding the Master Plan?

A. Their own, I presume. That is why they are employed, is to evaluate the condition and requirements as they see them, and to formulate a plan to fit those requirements.

Q. I believe you stated, under your examination by Mr. Weymann, that the information was gathered at the Air Base.

A. That is basic information that I referred to.

Q. Who gathered that basic information at the Air Base?

A. That basic information was probably gathered in part by personnel of the Base, in part by or with the assistance, shall we say, of the Los Angeles District Engineer.

Q. Would you know anyone in particular that worked on that? A. No, I do not.

Q. What year was that information gathered?

A. Generally during the period from 1946 to 1948. [134] However, before the—the usual procedure is that when you employ a firm to develop a Master Plan, they will take what information is

(Testimony of DeWolfe H. Miller.)

available and bring it up to date, and from that they start their planning.

Q. Can you please give me the date in December 1950—you testified it was approved in December 1950. What was the exact date on that, do you know?

A. I do not have the exact date on that.

Q. The first of the month, or the latter part of the month?

A. I know it was in December, but I do not have the exact information here. I can get that if it is important.

Q. Do you know the date that Baltimore approved the final plan?

A. It would be previous to that.

Q. How much previous?

A. It could be as much as a year previous.

Q. Could it be more than a year previous?

A. It would be possible.

Q. What year, what date, did Baltimore start as head of the A. R. D. C., which is short for Air Reserve Development Command.

A. I do not know. It was in the general neighborhood, I believe, of 1950. Formerly the function had been combined with the Air Materiel Command. [135]

Q. Then how could Baltimore approve it in 1949, if they didn't start until 1950?

A. The approval by the Major Command was previous to 1950. It could have been A. M. C. or

(Testimony of DeWolfe H. Miller.)

A. R. D. C. The plan does not become a valid plan——

The Court: Will you repeat that.

(The answer was read by the reporter as follows: "The approval by the Major Command was previous to 1950. It could have been A. M. C."——)

The Court: What is "A. M. C."?

The Witness: Air Materiel Command.

The Court: Now read the next.

(Reading of answer continued as follows: "——or A. R. D. C."——)

The Court: What is "A. R. D. C."?

The Witness: Air Reserve Development Command.

The Court: Proceed.

Q. (By Miss Barnes): You say the contractors J. Gordon Turnbull Company was the company that made these plans, is that correct?

A. That is correct.

Q. What background in aviation enabled these contractors to properly evaluate the flying needs?

A. J. Gordon Turnbull is a firm of national reputation, has done master planning on several large contracts, and, with [136] their contacts with industry, they deemed capable of developing a suitable plan.

The Court: Pardon me. Do you know of your own knowledge whether they arranged any of the plans of a similar nature prior to this date?

The Witness: I can not say specifically what air

(Testimony of DeWolfe H. Miller.)

fields they have made the Master Plans on. I can gather information on that very easily.

The Court: I just wanted to know.

The Witness: I can say this, that the firms which are selected have to submit pre-qualifications, and the planning and determination secured from the Secretary of Air are made before we can employ any firm to draw a Master Plan contract.

Q. (By Miss Barnes): Do you know the cost of the Turnbull Master Plan, what the engineering firm received for making the plan?

Mr. Weymann: I object to that. It is entirely immaterial and irrelevant.

The Court: I think it is immaterial. Objection sustained.

Q. (By Miss Barnes): Do you know the cost of the——

I want to make an offer of proof.

The Court: You may make your offer of proof.

Miss Barnes: That because of changes in this Master Plan, which I will prove to your Honor it was done for spite, it has caused and will cause the government millions and millions of dollars, because they are going to have to change——

The Court: Make the offer of proof.

Miss Barnes: That is my offer of proof.

Q. The firm of Periera and Luckman, did you testify they had made a previous plan?

A. Previous to what plan?

Q. Previous to the Turnbull plan.

A. I stated they had evaluated it and made a

(Testimony of DeWolfe H. Miller.)

separate determination which coincided with the Turnbull plan, or essentially to that effect.

Q. On these Boards on the field, would any consideration have been given by these contractors, these planners, the architects that make the plan, to the knowledge of the test pilots and local Board on the field?

A. I do not quite understand your question.

Q. Would the company that made these plans be influenced by the regard of the local experts in the Air Force on the field, that do the test work?

A. Yes, their opinions and advice would be taken into consideration.

The Court: Well, you spoke of the hiring of Periera [138] and Luckman to make this re-evaluation. Did they make it on the basis of the plan that had been submitted by the J. Gordon Turnbull Company, or did they make it originally?

The Witness: They made, and were requested to make, a separate evaluation, disregarding the Turnbull plan, to see what they would come up with.

The Court: Did they have the Turnbull Plan before them when they did that?

The Witness: I would say yes. The information was available.

There is one point I would like to make, if I may.

The Court: You may make it if you wish.

The Witness: The approval of a plan by the Base Development Board or the Major Command

(Testimony of DeWolfe H. Miller.)

is nothing more than a routine approval. A Master Plan is not considered valid and finally approved until it is approved by Headquarters, United States Air Force.

So any approval prior to that places the plan generally in the category of a preliminary Master Plan.

The Court: Proceed, Do you have any further questions?

Miss Barnes: I want to talk about this map, your Honor. I have shown it to Mr. Weymann, and I want to offer it in evidence.

Mr. Weymann: It is improper cross-examination. I didn't go into any of this. [139]

Miss Barnes: I want to ask him questions regarding this map. He made certain statements, Mr. Weymann.

The Court: Well, you lay your foundation for the questions.

Q. (By Miss Barnes): Will you state what that map is, Colonel Miller?

(Handing document to the witness.)

A. It is labeled A Vicinity Map, Muroc Army Air Field.

Q. Who was the map approved by?

A. It was approved here by Colonel Gilkey.

The Court: By whom?

The Witness: Colonel Gilkey.

Q. (By Miss Barnes): What year? What date?

A. 12 March 1947.

Q. Does it show any revisions?

(Testimony of DeWolfe H. Miller.)

A. Yes, it does.

Q. What are they?

A. They show the addition of the Rocket Static Test.

Q. What date was that?

A. On 12 December 1947.

Q. What else do they show?

A. Runway relocation, 21 September 1950.

Q. That doesn't say that, I don't believe. I believe you will find, Colonel, if you look a little closer, the [140] only date there is December 12th.

A. What is this date (indicating)?

Q. That is another date with some initials, some letters; I don't understand what they are.

A. Usually the procedure on this——

The Court: Talk louder.

The Witness: Usually the change on a map is shown and it is dated. And it is not uncommon for the person who made the change to put his initials; and I would assume this is the runway relocation, 21 September 1950, by B. N. M., whoever he may be.

Mr. McKendry: Your Honor, may I ask a question?

Mr. Weymann: If your Honor please——

The Court: Wait a minute, this gentleman wants to ask a question.

Speak to Miss Barnes and let her ask it. It is better to have one doing the questioning.

(Defendants conferring.)

Q. (By Miss Barnes): I believe, Colonel Miller,

(Testimony of DeWolfe H. Miller.)

if you look closely—here is the magnifying glass—there are two revisions, (a) and (b), both bearing the date of December 12th, 1947.

A. I see you do have two changes there.

The Court: What is that answer?

The Witness: There are two changes, (a) and (b) dated [141] 12 December 1947.

The Court: Is there any change there in 1950?

The Witness: The change——

The Court: The one you referred to before?

The Witness: The change in 1950 reads "21 September 1950, B. N. M." I do not know what that stands for.

The Court: Was that the one you referred to before?

The Witness: Yes. My original interpretation was incorrect. There are two changes shown for 12 December 1947, (a), Rocket Static Test, (b), Runway Relocation.

The Court: May I, as a matter of understanding, take a look at that map?

Miss Barnes: I was going to ask him this question——

Mr. Weymann: Your Honor,——

(Document was handed to the Court.)

The Court: You may proceed.

Oh, Mr. Weymann, you were about to say something and I interrupted.

Mr. Weymann: I would like to inquire how the Defendants acquired possession of this map. That is the official map of the Edwards Air Force Base,

(Testimony of DeWolfe H. Miller.)

and it is government property; and I would like to know how these Defendants acquired it.

Miss Barnes: I would like to let Colonel Miller answer that question.

Q. Anywhere on that map is it listed as restricted [142] information or secret or confidential?

A. I do not see it so marked.

Mr. Weymann: But the map, on the face of it, is government property.

Q. (By Miss Barnes): Would maps like this be used by many contractors and many architects and people working on the Base? In other words, many hundreds of people could have or receive maps like this; is that not true?

A. Yes, it could be seen, as long as it is not a restricted map.

Miss Barnes: I think that answers the question, your Honor.

The Court: Well, have you any further questions?

Miss Barnes: Yes, I wanted Colonel Miller to point out now the relocated runway, and where it runs in relation to the Defendants property.

The Witness: This particular study shows the runway generally extending across the dry lakes, and the approach zone extends over the Barnes airfield. There are probably in the files a great number of studies of this type.

The Court: Read that answer, Mrs. Buck.

(The answer referred to was read by the Reporter.)